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THE BROKEN SAFETY NET: A STUDY OF EARNED INCOME TAX CREDIT RECIPIENTS AND A PROPOSAL FOR REPAIR

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The Earned Income Tax Credit (EITC) is the largest federal antipoverty program in the United States and garners almost universal bipartisan support from politicians, legal scholars, and other commentators. However, assessments of the EITC missed an imperative perspective: that of EITC recipients themselves. Past work relies on largely unconfirmed assumptions about the behaviors and needs of low-income families. This Article provides a novel assessment of the EITC based on original data obtained directly from 194 EITC recipients through in-depth qualitative interviews. The findings are troubling: They show that while the EITC has important advantages over welfare, which it has largely replaced, it fails as a safety net for low-income families. The problem is that the EITC provides a large windfall to families only once per year, during tax refund season. However, low-income families are particularly vulnerable to financial shocks and instability. Not

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surprisingly, such events rarely coincide with tax refund season. Without a fix, the EITC leaves many families on the brink of financial collapse. In the years to come, many more low-income families may file for bankruptcy or become homeless. Despite this grim outlook, this Article suggests a straightforward and promising new way to distribute the EITC that maintains the program's advantages while also providing a more secure safety net for low-income families in times of financial shock and instability.

Introduction

The economic insecurity of American families is the highest it has been in the past twenty-five years.[1] Between 2008 and 2010, one in five Americans experienced a 25% or greater decline in household income, "yet lacked enough financial resources to cope with the decline."[2] The slow recovery from the financial crisis of 2008[3] has

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1 This Article uses Jacob Hacker's definition of "economic insecurity," which has two components: "The 'insecure' are those whose available income declines by at least 25 percent from one year to the next (after adjusting for inflation) . . . and who lack an adequate financial safety net." Jacob S. Hacker et al., Econ. Security Index, Economic Security at Risk: Findings from the Economic Security Index, at 5 (2010)[hereinafter Hacker et al., Economic Security at Risk], *available at* http://www.rockefellerfoundation.org/news/publications/more-americans-are-financially-insecure.

2 Jacob S. Hacker et al., Econ. Security Index, Economic Insecurity and the Great Recession: Findings from the Economic Security Index, at 1 (2011) [hereinafter Hacker et al., The Great Recession], *available at* http://economicsecurityindex.org/assets/ESI%20Full%20Report%202011.pdf.

3 *See, e.g.*, Ben S. Bernanke, Chairman, Bd. of Governors of the Fed. Reserve Sys., Remarks at the 2012 National Association of Home Builders International Builders' Show (Feb. 10, 2012), http://www.federalreserve.gov/newsevents/speech/bernanke20110210a.htm

certainly contributed to this problem, but economic insecurity has been growing for some time.[4] Additionally, in the 1980s, the risk of an American in his or her forties spending one year below the poverty line was 13%; by the 1990s, this risk grew to 36%.[5]

While insecurity has increased for all Americans,[6] levels of insecurity are higher among those with low incomes,[7] those with limited education,[8] racial minorities,[9] young workers,[10] and single parents.[11] This increase in insecurity means that more Americans qualify for and seek financial help from the public safety net.[12] As the demand for government support increases, the debate about the adequacy of the safety net for low-income families has taken center stage politically.[13] Some argue that the safety net for low-income[14] workers is strong[15]

(noting that while "some progress has been made in reversing the losses in jobs and income sustained during the recession, the pace of expansion has been frustratingly slow and the unemployment rate remains very high by historical standards"); Aki Ito, *Fed Says Rebound After Bank Crisis Slower than Average Recovery*, BLOOMBERG (Apr. 16, 2012, 1:00 PM), http://www.bloomberg.com/news/2012-04-16/fed-says-rebound-after-bank-crisis-slower-than-average-recovery.html (describing a report by the Federal Reserve Bank of San Francisco which predicted that recovery from the 2008 crisis would be slower than during the period following World War II).

4 *See* HACKER ET AL., THE GREAT RECESSION, *supra* note 2, at 1; HACKER ET AL., ECONOMIC SECURITY AT RISK, *supra* note 1, at iii ("In 1985, the unemployment rate was 7.2%, and the [risk of economic insecurity] was 12%. In 2002, the unemployment rate was 5.8%, but the [risk of economic insecurity] rose to 17%.").

5 KATHERINE S. NEWMAN & VICTOR TAN CHEN, THE MISSING CLASS: PORTRAITS OF THE NEAR POOR IN AMERICA 178 (2007).

6 *See id.* at iv ("Virtually all groups . . . [have] experienced significant increases in insecurity over the past 25 years."). Hacker also notes that "while less-educated and poorer Americans have less stable family incomes than their better-educated and wealthier peers, the increase in family income volatility affects all major demographic and economic groups." Jacob S. Hacker, *The Middle Class at Risk*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 218, 224 (Katherine Porter ed., 2012).

7 *See* HACKER ET AL., ECONOMIC SECURITY AT RISK, *supra* note 1, at iv (noting that the amount of insecurity varies across the population and that the less affluent face the most insecurity); Lily L. Batchelder, *Taxing the Poor: Income Averaging Reconsidered*, 40 HARV. J. ON LEGIS. 395, 397 (2003) ("[L]ow-income families experience higher income volatility from year to year than middle- and high-income families . . . .").

8 HACKER ET AL., THE GREAT RECESSION, *supra* note 2, at 2.

9 *Id.*

10 *Id.*

11 *Id.* at 16–17.

12 *See generally* JACOB S. HACKER, THE GREAT RISK SHIFT: THE ASSAULT ON AMERICAN JOBS, FAMILIES, HEALTH CARE, AND RETIREMENT AND HOW YOU CAN FIGHT BACK (2006) [hereinafter HACKER, THE GREAT RISK SHIFT] (describing increased demands on public social programs due to increased economic insecurity).

13 One central concern is that "public social programs have eroded even as the demands on them have risen. And if critics have their way, these programs will erode even further." *Id.* at 8.

14 In this Article, I describe families as both poor and low-income. I use "low-income" when describing Earned Income Tax Credit (EITC) recipients because not all EITC recipients are poor, as defined by the federal poverty line. I use "poor" when I discuss families

(even too strong),[16] while others argue that more resources are needed.[17]

At the heart of the public safety net is the Earned Income Tax Credit (EITC),[18] which is the United States' "largest cash-transfer program for low-income workers with children"[19] and which has been called the "largest federal anti-poverty program."[20] When the EITC was implemented in 1975, it reached only 6.2 million recipients and provided $1.25 billion in credits.[21] By 2011, it served almost 26.8 million recipients (compared to just over 1.8 million families serviced by welfare in 2011)[22] who received $59.5 billion.[23] From 1995 to 2009, the

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who were or are on welfare (as they must have been below the federal poverty line to qualify); they often cannot be defined as "low-income" since they sometimes do not have a worker in the household, so their income would be zero but for government benefit programs.

15 *E.g.*, Rachel Weiner, *Romney, Citing Safety Net, Says He's 'Not Concerned About the Very Poor*,' WASH. POST BLOG (Feb. 1, 2012, 8:18 AM), http://www.washingtonpost.com/blogs/the-fix/post/romney-im-not-concerned-with-the-very-poor/2012/02/01/gIQAvajShQ_blog.html ("'I'm not concerned about the very poor. We have a safety net there,' Romney told CNN.").

16 *See, e.g.*, David M. Drucker, *DeMint Calls on Romney to Reframe Comments on Poor*, ROLL CALL (Feb. 1, 2012, 2:28 PM), http://www.rollcall.com/news/demint_calls_on_romney_to_reframe_comments_on_poor-212035-1.html (claiming that "the poor . . . are trapped in dependency . . . [and] don't need to be on social welfare programs" and arguing that safety net programs "are hurting, not just the poor, but our country"); Michael McAuliff, *House GOP Budget: Paul Ryan Plan Adds Food Stamps, Welfare Cuts to Medicare-Slashing Plan*, HUFFINGTON POST (Mar. 20, 2012, 7:35 AM), http://www.huffingtonpost.com/2012/03/20/house-gop-budget-plan_n_1366455.html (last updated Mar. 21, 2012, 7:40 AM) ("We don't want to turn the safety net into a hammock that lulls able-bodied people . . . into complacency and dependence." (internal quotation marks omitted)).

17 *See, e.g.*, HACKER, THE GREAT RISK SHIFT, *supra* note 12, at 9 ("What we need are new ways of allowing families to save and insure against some of the most potent risks to their income, coupled with new ideas for revitalizing American social insurance and providing economic opportunity to all.").

18 *See* Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 533 (1995) [hereinafter Alstott, *Limitations*] ("The federal [E]arned [I]ncome [T]ax [C]redit (EITC) . . . has recently assumed a central role in U.S. social welfare policy."); *see also* Marisol Bello, *Romney Remark Puts Focus on Safety Net for Very Poor*, USA TODAY, Feb. 3, 2012, at A4, *available at* http://www.usatoday.com/news/politics/story/2012-02-02/romney-safety-net-poor/52939822/1 (noting that the EITC is one of America's strongest safety net programs).

19 Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285, 285 (2010) [hereinafter Alstott, *Why the EITC Doesn't Make Work Pay*].

20 Lawrence Zelenak, *Redesigning the Earned Income Tax Credit as a Family-Size Adjustment to the Minimum Wage*, 57 TAX L. REV. 301, 301 (2004).

21 ALAN BERUBE, BROOKINGS INST., USING THE EARNED INCOME TAX CREDIT TO STIMULATE LOCAL ECONOMIES 2 (2006), http://www.brookings.edu/~/media/research/files/reports/2006/11/childrenfamilies-berube/berube20061101eitc.pdf.

22 *Fiscal and Calendar Year 2011—TANF: Total Number of Families*, OFFICE OF FAMILY ASSISTANCE (Apr. 3, 2012), http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2011/2011_family_tan.htm.

EITC distributed more funds to recipients than the Supplemental Nutrition Assistance Program (SNAP),[24] and by 2001, the EITC distributed more funds than the Temporary Assistance to Needy Families (TANF) program (referred to herein as "welfare").[25] The EITC has taken a more prominent role in the financial lives of low-income families as more families qualify for it,[26] and the debate has intensified about the structure and utility of the EITC as a safety net.[27] One of the challenges for scholars evaluating the EITC is that Congress provided almost no legislative history indicating its intent for the program.[28] However, for the most part, scholars and commentators on both sides of the political spectrum support the EITC,[29] and most calls for reform focus on increasing subsidies for specific types of families.[30]

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[23] *EITC Statistics*, INTERNAL REVENUE SERV., http://www.eitc.irs.gov/central/eitcstats (last updated Jan. 23, 2012).

[24] This federal food assistance program was formerly known as the Food Stamp Program.

[25] Ruby Mendenhall et al., *The Role of Earned Income Tax Credit in the Budgets of Low-Income Families*, 86 SOC. SERV. REV. 367, 368 (2012).

[26] The 2010 tax year marked the highest claim rate since the EITC was enacted in the 1970s. In the fiscal year 2010 tax year, nearly one in every five filers claimed the EITC, which "represents an increase of almost three million tax filers (a 12 percent gain) since the start of the recession in 2008, and a 20 percent jump (almost $10 billion) in dollars claimed." Elizabeth Kneebone, *EITC Receipt Continues to Rise in Recession's Wake*, NEW REPUBLIC (Apr. 17, 2010, 12:41 PM), http://www.tnr.com/blog/the-avenue/102731/eitc-receipt-continues-rise-in-recessions-wake.

[27] *See, e.g.*, MICHAEL J. GRAETZ & JERRY L. MASHAW, TRUE SECURITY: RETHINKING AMERICAN SOCIAL INSURANCE 54, 296–97 (1999) (arguing that the moral hazard problem associated with the EITC is substantial, and thus that targeted subsidies for certain necessities and identifiable events are a better option than generally raising EITC subsidies); Alstott, *Limitations*, *supra* note 18, at 535 (arguing that the tax system has institutional constraints that hinder its administration of transfer programs such as the EITC); Batchelder, *supra* note 7, at 397 (arguing that averaging the amount of money individuals get from the EITC over a two-year period would better serve the needs of low-income individuals and would mitigate the disproportionate burden of annual income taxation on low-income families); David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955, 1023–25 (2004) (concluding that there are benefits to administering the EITC through the tax system); Zelenak, *supra* note 20, at 302 (arguing that the EITC should be redesigned as an adjustment to the minimum wage that ensures that all families with a working parent will live above the poverty line, regardless of how many children they have).

[28] Zelenak, *supra* note 20, at 301.

[29] *See* JOEL F. HANDLER & YEHESKEL HASENFELD, BLAME WELFARE, IGNORE POVERTY AND INEQUALITY 81 (2007) (noting bipartisan praise for the EITC); Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 285 (noting widespread support for the EITC).

[30] *See, e.g.*, WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS 223 (1996) (advocating for the expansion of the EITC to lift all full-time working-poor families out of poverty); Janet McCubbin, *Noncompliance with the Earned Income Tax Credit: The Determinants of the Misreporting of Children*, *in* MAKING WORK PAY: THE EARNED INCOME TAX CREDIT AND ITS IMPACT ON AMERICA'S FAMILIES 237, 237–73 (Bruce D. Meyer & Douglas Holtz-Eakin eds., 2001) (examining noncompliance with the rules of the

The current calls for reform, however, are missing an important perspective: that of EITC recipients themselves. Past scholarship relies on largely unconfirmed assumptions about the behaviors and needs of low-income families.[31]

In this Article, I provide a novel assessment of the EITC based on empirical data obtained directly from EITC recipients through in-depth interviews.[32] Along with a team of researchers,[33] I conducted

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EITC and considering reforms to improve compliance); Zelenak, *supra* note 20, at 302 ("[T]he Article's claim is that the EITC can and should be revised to function as an adjustment to the minimum wage based on family size . . . ."); JASON FURMAN, CTR. ON BUDGET & POL'Y PRIORITIES, TAX REFORM AND POVERTY 2 (2006), http://www.cbpp.org/files/4-10-06tax.pdf (proposing to expand the EITC for larger families and for those without children); JOHN KARL SCHOLZ, BROOKINGS INST., EMPLOYMENT-BASED TAX CREDITS FOR LOW-SKILLED WORKERS (2007), http://www.brookings.edu/~/media/research/files/papers/2007/12/12%20taxcredit%20scholz/12_taxcredit_scholz (advocating an increased EITC for the childless and exploring its effects on work, crime, and marriage). *But see* Alstott, *Limitations*, *supra* note 18, at 534–35 (arguing that the debate about the EITC has been oversimplified and there are inherent institutional constraints present in the tax system that do not exist in traditional welfare programs); Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 312 ("[T]he EITC does not make . . . a large reduction in poverty, . . . [allow] a minimum-wage worker to support . . . [her] child at a socially decent minimum, . . . [or] ensure a decent minimum standard of living for willing workers who suffer [emergencies that make them unable to work].").

31 I do not argue that the EITC or any other public benefit program should be designed based solely on the desires of those it serves. This would lead to conflict and potentially faulty policy. Instead I suggest that, by talking directly to EITC recipients, we can better understand how and why they make certain financial decisions and what some of the unintended consequences of the program have been. This information, in turn, can allow us to design more targeted and effective policy. *See infra* Part V.B (describing in greater detail specific proposals for reform).

32 In-depth interviews are a standard research technique in qualitative studies in the social sciences. *See, e.g.*, ROBERT C. ELLICKSON, ORDER WITHOUT LAW (1991) (using a combination of interviews and ethnography of cattle farmers in a county in California to challenge the assumptions of the Coase Theorem and to put forth a new theory of social norms and order); Mario Luis Small, *'How Many Cases Do I Need?': On Science and the Logic of Case Selection in Field-Based Research*, 10 ETHNOGRAPHY 5, 11 (2009) (using qualitative methods to gather data and using both qualitative and quantitative methods of analysis). Several important studies in legal scholarship have been conducted using qualitative methods. *See, e.g.*, Catherine R. Albiston, *Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights*, 39 LAW & SOC'Y REV. 11 (2005) (drawing on twenty-four interviews with workers who negotiated contested leaves under the Family and Medical Leave Act to examine how social institutions influence workplace mobilization of rights under the Act, how rights under the Act operate in practice, and how rights under the Act interact with other normative systems to construct the meaning of leave); Lauren B. Edelman, Howard S. Erlanger & John Lande, *Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace*, 27 LAW & SOC'Y REV. 497 (1993) (utilizing semi-structured, in-depth interviews to examine businesses' internal complaint handlers' conceptions of civil rights law and the implications of those conceptions for their approach to dispute resolution); Angela K. Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451 (2008) (interviewing fifty low-income women about their experiences and preferences for usury regulations, and then using her findings and the

interviews that averaged two hours and thirty minutes in length with 194 families who received the EITC in 2007. Based on an analysis of this data, I find that the EITC has important advantages over welfare,[34] but that in its current form, it fails as a safety net for families. I argue for a new way of distributing the EITC that maintains its advantages for low-income families, while also providing more support for families in times of financial shock[35] and instability.

The advantages of the EITC are clear. First, respondents were overwhelmingly positive about the EITC and preferred it to welfare. Respondents indicated that the EITC program motivates them to work and gives them a sense of pride in receiving a tax refund based on their work. The EITC also allows recipients a way to save, work

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suggestions of the women to advocate for modifications to credit cards that could serve the needs of both low-income women and creditors); Stewart Macaulay, *Lawyers and Consumer Protection Laws*, 14 LAW & SOC'Y REV. 115 (1979) (interviewing one hundred lawyers in Wisconsin to better understand the impact of consumer protection laws, finding that lawyers tend to know little about the precise aspects of consumer protection law and instead rely on general norms of fairness and incentives for themselves when handling cases, and discussing the implications of these findings for changes in the law); Ronald J. Mann, *Explaining the Pattern of Secured Credit*, 110 HARV. L. REV. 625 (1997) (utilizing interviews with more than twenty borrowers and lenders in various sectors of the economy to better understand how borrowers and lenders decide whether to engage in a secured or unsecured transaction); Calvin Morrill, Lauren B. Edelman, Karolyn Tyson & Richard Arum, *Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth*, 44 LAW & SOC'Y REV. 651 (2010) (utilizing both quantitative methods and qualitative interviews to analyze ethnoracial patterns in youth perceptions and responses to rights violations and to advance a new model of legal mobilization).

Qualitative research is particularly useful in "explor[ing] micro-social phenomena . . . [and] the cultural understandings actors bring to social experience, interactions, and institutions." MICHELE LAMONT & PATRICIA WHITE, NAT'L SCI. FOUND., WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMIC QUALITATIVE RESEARCH 10 (2005), *available at* http://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf. Further, qualitative methods are useful for "unraveling the mechanisms underlying causal processes." *Id.* Qualitative research also allows scholars to understand and gather data within social contexts in a way that traditional surveys do not. *Id.* For further discussion of the value of qualitative research, see *infra* note 54–57 and accompanying text.

33 Principal investigators included Kathryn Edin of Harvard University, Jeffrey Kling of the Congressional Budget Office and the National Bureau of Economic Research, and Ruby Mendenhall of the University of Illinois at Urbana-Champaign. The project was generously funded by the Ford Foundation. As is common with large-scale data projects, the data from this project have been (and continue to be) analyzed and used by several researchers involved in the project for multiple publications, each of which has a different focus. The unique focus of this Article is (1) evaluating the utility of the EITC as a safety net for families who experience financial shocks; (2) exploring how families cope with such shocks in the new, post–welfare reform era; and (3) proposing changes to the EITC to better help families cope with financial shocks in the context of a shrinking public safety net.

34 For a discussion of the advantages of the EITC as described by recipients, see *infra* Part III.

35 See *infra* note 52 for a description of a financial shock for the purposes of this study.

toward mobility goals, and avoid the stigma associated with other public welfare programs.

The problem is that low-income families are particularly vulnerable to financial shock events that can lead to job disruption.[36] When families experience these shock events, they find that the safety net protecting them is thin and often unravels. Since recipients only receive the EITC once per year, it does little to help them weather these events. Welfare has become difficult to obtain and is stigmatized,[37] so the majority of low-income families turn to what has become the private safety net—credit cards—when shock events occur. Thus, by the time they receive the EITC during tax refund season, a significant portion of the refund must be used to pay off credit card interest and fees at the expense of savings and mobility. Families find themselves in an unmanageable and inescapable cycle of debt accumulation, potentially leading to bankruptcy. For families who do not have credit cards, shock events often result in immediate dire consequences including homelessness and hunger.

I argue that the EITC can be redesigned to provide a more robust safety net by offering a new program of distribution and withholding. Under this program, 20% of recipients' EITC refunds would be withheld in interest-bearing accounts that I call Savings and Emergency Fund (SAEF) accounts. Recipients would receive SAEF cards, which would function much like debit cards, allowing recipients fast access to the money in their SAEF accounts. Incentives such as annual bonuses based on the percentage of money left in the account at the end of the year would encourage use of the funds for emergencies only. This program goes beyond the usual recommendations of doing away with the EITC entirely or increasing the refund amount received by families.

Part I explains the study's data and methodology. Part II discusses in more detail how the EITC has largely replaced welfare as the main safety net for low-income families. I discuss the history of this change and the key differences between welfare and the EITC. Part III discusses the data from the study and surveys the assets of the EITC program, offering the unique perspective of the recipients. My interview data, consisting of in-depth qualitative interviews with a large number of respondents, shed new light on the experiences of low-income families with the EITC and the safety net needs of these families. In Part IV, I show that, though the EITC is popular among

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[36] Alstott argues that one of the reasons the EITC does not ensure a minimum decent standard of living for willing low-income workers is that such workers are more susceptible to job disruptions due to unemployment, disability, and emergencies. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 308, 312.

[37] *See* discussion *infra* Part III.

commentators and recipients, financial shocks have made this a dangerous time for low-income families. The public safety net is broken and has been replaced by credit cards, putting many families at risk. In Part V, I discuss existing proposals for change that may address some of the problems EITC recipients face when they experience financial shocks. In Part VI, I propose a new method of EITC distribution and withholding through SAEF accounts and cards as a means of maintaining the advantages of the EITC while securing the safety net for low-income families. I conclude by arguing that in these times of increased economic insecurity, a program such as SAEF will help prevent many low-income families from experiencing financial ruin when they suffer a shock event.

I
Data and Methodology

A. Sample Selection

This study took place in two locations: Boston, Massachusetts, and the Champaign-Urbana metropolitan area in Illinois.[38] The first phase of the study began in late January 2007, with a research team visiting selected non-profit and for-profit tax preparation sites in Boston and the Champaign-Urbana area at random sampling intervals. Using tract-level census data, the team selected sites based on the racial, ethnic, and economic composition of the neighborhoods they served.[39] In mid-April, the team also began sampling at area Head Start centers[40] to ensure that it captured some respondents who filed

[38] While the minimum wage across these two sites does not vary much ($7.75 in Illinois versus $8.00 in Massachusetts), living costs do vary significantly by city. This presumably affects households' ability to make ends meet from month to month, as well as to save, weather unexpected financial shock events, and build assets. Sites were selected so as to reflect some of the considerable contrast in living costs across U.S. cities, with Boston well above average and Champaign-Urbana somewhat below average. In 2010, Boston rated 132.5 on the composite index of the national Cost of Living Index and 152.7 in the housing category of the Index. Champaign-Urbana, on the other hand, rated 96.9 composite and 90.8 for housing. The Cost of Living Index measures the relative price levels for consumer goods and services for a "mid-management standard of living." The nationwide average equals 100, and each index is read as a percentage of the national average. U.S. Census Bureau, Statistical Abstract of the United States 478–79 tbl.728 (2012), *available at* http://www.census.gov/compendia/statab/cats/prices/consumer_price_indexes_cost_of_living_index.html.

[39] We sought a balance of sites located in lower-income White and Black neighborhoods of the Champaign-Urbana area, and White, Black, and Latino areas of Boston.

[40] We sampled at Head Start centers because a family must be low-income to qualify for Head Start. Thus, sampling at Head Start centers allowed us to sample families who likely received the EITC and met the sampling criterion of having a child.

their taxes themselves, since roughly 30% of all EITC filers do not use tax preparers.[41]

The research team asked anyone at these sampling sites who claimed the EITC to participate in a short survey that focused on planned uses of their refund.[42] The team asked all respondents with dependent children who said they expected to receive a tax refund of at least $1000 to give consent for further contact.[43] Overall, 657 of those surveyed fit these criteria.

In the second phase of data collection, which began approximately six months after the initial survey, the team began contacting families for in-depth interviews. We selected a stratified random sample of survey respondents who met the initial sampling criteria.[44] The sample was stratified by city (seventy-nine interviews in Champaign-Urbana and 115 in Boston); by race/ethnicity (even numbers of White and Black households in Champaign-Urbana and even numbers of White, Black, and Latino households in Boston); and by family structure (within each city and racial and ethnic subgroup, the team sampled two-thirds who had filed as single household heads and one-third who had filed as married).

Both phases of sampling had very high response rates. For the initial survey phase, I estimate that the response rate exceeded 95%. Of those invited to participate in the in-depth interview in phase two, all agreed to be interviewed except seven in Champaign-Urbana (four from the for-profit and non-profit sites, and three from Head Start) and nine in Boston (five of these refusals came from the two for-profit

41 Mendenhall et al., *supra* note 25, at 377.

42 Potential respondents were offered $10 to fill out the survey.

43 Imposing the $1000 criteria insured that the sample represented families who had some meaningful potential opportunity for savings and asset building through their tax refunds.

44 The sample was diverse. See Appendix A for a chart of demographics. Black families represented 35% of the Boston sample and 58% of the Champaign-Urbana sample. White families made up 35% of the families interviewed in Boston and 42% of the families in Champaign-Urbana. Latino families, which were 30% of the Boston sample, were only included in Boston due to their small numbers in Champaign-Urbana. Families with married adults represented 39% of the Boston sample and 43% of the Champaign-Urbana sample. Average family size in both cities included two children. About 60% of respondent families in Boston lived in public or subsidized housing. Only 10% owned their own homes. Champaign-Urbana respondents were more diverse in terms of home ownership, with 44% of families renting at fair market value, 18% in public or subsidized housing, and 20% owning their homes. About half of respondent families in both cities worked full-time; 17% of families in the Boston sample and 25% in the Champaign-Urbana sample combine full-time and part-time work. In terms of TANF status, 10% of Boston respondent families received assistance versus 1% of Champaign-Urbana families.

sites, one from a non-profit site, and three from Head Start).[45] Thus, in this phase, the response rate was over 90%. Ultimately, six households were not eligible for the study, either because the interview revealed they had not, in fact, received the EITC or because their refund amount did not exceed $1000. This resulted in a final sample of 194 families.[46]

Overall, 36% of the intensive interview sample was drawn from for-profit tax sites, 20% from non-profit sites, and 36% from Head Start centers. Additionally, 7% of the sample was recruited via referrals from other respondents and 1% from an online advertisement. Nearly two-thirds (62%) of respondents used a for-profit tax preparer to file their taxes, 24% relied on a non-profit preparer, and 14% filed their own taxes or elicited the help of a family member or friend.

B. Data Collection

The team began conducting interviews[47] about six months after families received their refunds. We conducted in-depth, semi-structured interviews in person with the head of household or, in the case of married couples, with the parent in charge of the household's finances. Over 90% of interviews took place in respondents' homes; the remaining 10% took place in public locations such as parks, restaurants, or community centers. Interviews averaged two hours and thirty minutes in length and ranged from ninety minutes to nearly five hours. Respondents received $60 for their time. If the interview ran substantially longer, interviewers offered additional money to further compensate the respondent.

Interviewers developed a rapport with respondents, both through initial "small talk" and by asking a series of "warm-up" questions.[48] It

[45] This does not include families that we could not contact for the follow-up interviews, usually because they had moved.

[46] For an in-depth analysis of qualitative sampling techniques and small versus large samples, see LAMONT & WHITE, *supra* note 32, at 11–12.

[47] Every interviewer had one of his or her first interviews attended by and evaluated by a senior interviewer or principal investigator. Additionally, each interviewer attended at least one interview conducted by another interviewer. After these initial observations, generally only one interviewer attended each interview. However, when there appeared to be a significant childcare issue, a second interviewer attended and entertained the children to ensure that the respondent was able to focus fully on the interview.

[48] All interviewers attended a one-week qualitative training session by one of the principal investigators, Dr. Kathryn Edin. Dr. Edin is a professor of public policy and management at Harvard University, and she is nationally known for her use of qualitative methods to develop deeper understanding into how low-income parents make decisions, including decisions about marriage, childbearing, and expenditures. *See generally* KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (2005) (exploring some of the trends that drive the unintended pregnancies of unmarried women by gathering and analyzing qualitative, long-form

was not uncommon for respondents to ask interviewers to stay for dinner, to break down crying when discussing a particularly sensitive issue, or to offer to give the interviewer a tour of the respondent's house or neighborhood. All respondents signed a consent form that summarized the study and potential risks and benefits to the respondent, detailed the confidentiality measures taken to protect respondent identity, and allowed the interview to be recorded, among other things.

The interviews explored themes of financial goals, knowledge, and behavior; income and expenditures (both monthly and after the refund); experiences with financial and social service institutions; experiences with public benefits and comparisons to the EITC; savings and assets; home and work life; housing and neighborhood; and family background.[49]

C. Data Analysis

After the interviews, professional transcribers transcribed the recordings word for word. The transcriptions were loaded into a standard qualitative methods analysis program (Access) and analyzed using content analysis, a form of qualitative analysis developed for examining data such as interviews. The research team worked together to develop a detailed codebook with instructions for trained coders. The transcripts were coded into both numeric and thematic fields. Numeric information, such as a detailed accounting of annual income and expenditure, EITC receipt and allocation, savings, and debt, among others, were analyzed using quantitative data analysis software (STATA).[50] Thematic data, such as the decisionmaking processes that underlie EITC allocations and patterns of saving and debt, mobility goals, views about financial institutions and credit cards, work, and experiences with the welfare system, among others,

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personal interviews with low-income single mothers); KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK (1997) (studying the budgets of single mothers through qualitative interviews to determine to what extent their basic needs are met by the income generated from low-wage work); Kathryn Edin, *Client-Based Ethnographic Research as a Tool for Implementation Analysis*, *in* POLICY INTO ACTION: IMPLEMENTATION RESEARCH AND WELFARE REFORM 165–91 (Mary Claire Lennon & Thomas Corbett eds., 2003) (describing the benefits that qualitative, client-centered research can bring to the evaluation of social programs).

[49] The interview guide had seventy-one questions. Many of the questions had multiple subparts. Interviewers were directed to loosely follow the guide, but also to ask relevant follow-up questions and probes that were not part of the guide and to skip questions that were clearly irrelevant to the individual respondent.

[50] For a summary of this quantitative information, see *infra* Appendix A.

were sorted into broad topical categories and further coded and analyzed using standard qualitative analysis techniques.[51]

After the initial coding process, the coders analyzed the data more specifically for information on shock events and coping strategies. Two coders and I read each transcript and wrote a separate memo on each respondent that listed (1) the shock event(s) experienced,[52] (2) what, if anything, triggered the shock event, (3) how the respondent coped with the shock event and reasons for selecting one or more coping strategies, and (4) the effects of the event for the respondent's family. Once these memos were analyzed and codes were developed for each shock event, coping strategy, and shock effect, each transcript was formally coded according to these

[51] The codebook included general rules, then the following topic modules: 1. General/Demographic codes (37 subcodes); 2. Current Household (4 subcodes); 3. Family History (5 subcodes); 4. Current Neighborhood (3 subcodes); 5. EITC Income and Expenditure (10 subcodes); 6. EITC Knowledge (1 subcode); 7. Other Income and Expenditure (14 subcodes); 8. Banking, Debt, and Assets (6 subcodes); 9. Parental Values and Children's Activities (6 subcodes); 10. Future Plans (4 subcodes). Once data had been coded, researchers could use Access to analyze information by type of code. For example, one code relevant to this Article was "EITCSPEND," a subcode of the "EITC Income and Expenditure" module. EITCSPEND is described in the codebook as:

> Description of respondent's use (or thoughts of using) EITC to pay off debt, as well as what type of debt they have and would pay off with the EITC. Include respondent's use (or thoughts of using) EITC to save for a big-ticket item. Also include respondent's view of spending more money in December and January because they know a tax refund is coming—whether they know anyone who does or do it themselves.

A researcher could view all text coded as EITCSPEND and compare responses by different demographic factors. For example, a researcher could view all responses to this question from people who had a credit card and compare them to those of people who did not. Another code relevant to this Article was "GovAssist," a subcode of the "Other Income and Expenditure" module. GovAssist is described in the codebook as "Respondent's experiences with receiving government assistance." The codebook directs researchers to "include respondent's experiences with TANF over the entire process—applying, what they liked, didn't like, if they received any lump sums, experiences of friends and family with TANF and respondent's description of how TANF works."

[52] We used previous studies about shock and trigger events as guides, but unlike these previous studies, we did not begin the coding process looking for specific shock/trigger events. *See infra* notes 155–56 and accompanying text. Instead, we used the previously identified trigger events as a guide, but also recorded any event that respondents described as initially unanticipated and potentially damaging to economic well-being as a shock event. We coded any such event that happened within the past five years. After several phases of coding, the following fifteen key events were experienced by at least five respondents: medical or disability status changes (both physical and mental health issues); complications from pregnancy or birth of a child; changes in employment status; relationship issues (including domestic violence, divorce, and separation); death of a family member; incarceration of partner; incarceration of self; family network breakdown or burden; crime victimization; car repairs; home repairs; loss of housing; public assistance issues (such as loss of food stamps or welfare); loss of child support; and banking issues (such as unexpected overdraft fees).

categories. The "shock effect" category was coded as one of the following: (1) no change, (2) moved to homeless shelter, (3) moved to less expensive apartment, (4) moved in with family or friends, or (5) lack of food and basic necessities.

D. *Qualitative Methodology*

Several prominent legal scholars have used qualitative methodology to study questions about the law.[53] Qualitative methods enable researchers to engage in "process tracking," which helps to "discern how processes emerge and evolve."[54] They are seen as advantageous over surveys in that they allow scholars to understand "the experience[s] of individuals within social contexts" and "allow for the inclusion of subjective experience[s] and cultural sense making . . . ."[55] Qualitative data often provide insight into "the cultural understandings actors bring to social experience, interactions, and institutions."[56] Qualitative interviews also allow researchers to build rapport and trust with the participants during the interview, which may increase the chances of obtaining potentially embarrassing and personal information about debt, finances, and family circumstances.[57]

For this study, interviewing was the ideal methodology because the goal was to obtain a rich account of people's experiences and opinions about welfare, the EITC, credit cards, and their finances. We needed open-ended questions and answers and follow-up questions to truly understand respondents' feelings about welfare and the EITC, the underlying cultural explanations, and the respondents' financial behavior and norms. Additionally, interviewing respondents in their homes likely made them more comfortable while discussing personal financial and family information. The qualitative in-depth interview process enabled me to understand why the respondents favor the EITC over welfare, why they are resistant to welfare-type programs, and how they think about and handle shock events. Many of their answers were unexpected, and surveys that forced them to select a pre-determined answer would not have captured the cultural explanations for respondents' financial behaviors. Overall, the interview process allowed me to capture the true safety net needs of respondents and to develop a policy proposal that addresses the financial needs of

53 For examples of such studies, see *supra* note 32.

54 Lamont & White, *supra* note 32, at 10.

55 *Id.*

56 *Id.*

57 *See* Littwin, *supra* note 32, at 504 (discussing the means by which the author worked to build trust between the interviewer and the interviewee in order to obtain sensitive financial information).

EITC recipients while taking into account their underlying cultural beliefs, attitudes, and resulting behaviors.

II
The Evolving Safety Net: The EITC Replaces Welfare

A. The Mechanics of the EITC

The EITC is a refundable tax credit that supplements the earnings of low-income workers. The EITC is run through the Internal Revenue Service (IRS) and resembles other tax refunds in administration and public perception, but in substance it is more like other social welfare programs such as SNAP and TANF.[58] Families with children are eligible to receive the most sizable benefits from the EITC; workers without children can receive modest EITC benefits. To qualify, families must have earned some money working in the tax year.[59]

The EITC refund is typically received in a lump sum each year after filing taxes (usually between February and April).[60] The EITC offers a subsidy to those whose earnings are under a certain threshold; in 2011, the threshold was $40,964 for a single parent with two children and $46,044 for a married family with two children.[61] The exact amount families receive is significant. In 2011, the credit averaged $2240.[62]

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[58] *See* Alstott, *Limitations*, *supra* note 18, at 533 ("Although the EITC is styled as a 'refundable tax credit,' in fact it is a kind of welfare program—or, in economists' terms, an income-transfer program."); Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. Rev. 1867, 1867 (2005) ("Although generally tax-like in its administration, in substance [the EITC] resembles nontax antipoverty transfer programs, such as Food Stamps and Temporary Assistance for Needy Families (TANF).").

[59] 26 U.S.C. § 32(a), (c) (2006); *see* Jennifer Bird-Pollan, *Who's Afraid of Redistribution? An Analysis of the Earned Income Tax Credit*, 74 Mo. L. Rev. 251, 255–56 (2009) (describing some of the qualifications required to be eligible for the EITC).

[60] From 2002 to 2004, workers had the option of claiming a portion of their expected EITC on a monthly basis, but only 3% did so. U.S. Gov't Accountability Office, Report to the Joint Committee on Taxation: Advance Earned Income Tax Credit 3 (Aug. 2007), *available at* http://www.gao.gov/new.items/d071110.pdf.

[61] *2011 Tax Year EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, Internal Revenue Serv., http://www.irs.gov/Individuals/2011-Tax-Year-EITC-Income-Limits,-Maximum-Credit—Amounts-and-Tax-Law-Updates (last updated Jan. 23, 2013).

[62] *EITC Statistics*, Internal Revenue Serv., http://www.eitc.irs.gov/central/eitcstats (last updated Jan. 23, 2012).

The EITC has a phase-in range, a plateau range, and a phase-out range for benefits.[63] In the phase-in range, each additional dollar of income is supplemented by the credit.[64] In the plateau range, workers receive the maximum credit and increased earnings do not change the credit amount.[65] In the phase-out range, the credit is gradually reduced as the worker's earnings increase.[66] The exact point at which families hit the plateau and phase-out ranges vary by the number of children claimed. For a single mother of three who works full time, benefits gradually increase with earnings up to $12,779. With earnings between $12,780 and $16,690, the mother's benefit plateaus at $5751, and with earnings between $16,691 and $43,998, the benefits gradually decrease.[67] There are several other requirements for EITC eligibility. Those who qualify must file a tax return and have a valid Social Security number.[68] Additionally, if a taxpayer has fraudulently claimed the EITC in the past year or claimed more than she was entitled to, this may render the applicant ineligible in future years.[69]

B. A Brief History of the EITC

In its early years, the EITC was just one of many relatively small programs aimed at low-income workers.[70] The early underpinnings for the EITC were part of Nixon's proposed "Family Assistance Plan" (FAP) in 1969,[71] influenced by Milton Friedman's idea for a "negative

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63 *See Tax Year 2011 Income Limits and Range of EITC*, INTERNAL REVENUE SERV., http://www.eitc.irs.gov/central/abouteitc/ranges/ (last updated Oct. 9, 2012) (displaying the ranges in a chart of EITC amount received versus income level).

64 *See id.*

65 *See id.*

66 *See id.*

67 *See id.* For a visual chart detailing the ranges for families with zero to three children, see *id.*

68 *See* I.R.C. § 32(c)(1)(E) (2006); *see also Basic Qualifications*, INTERNAL REVENUE SERV., http://www.eitc.irs.gov/central/abouteitc/basicqualifications (last updated Dec. 11, 2012) (providing more information about qualifications for the EITC).

69 *See* I.R.C. § 32(k) (2006) (disallowing the EITC for those who have made a fraudulent claim in the last ten years, a reckless claim in the last two years, or an improper claim without subsequently demonstrating eligibility).

70 *See* Alstott, *Limitations*, *supra* note 18, at 534 (describing the modest size of the initial EITC program).

71 *See* Richard Nixon, Address to the Nation on Domestic Programs, 2 PUB. PAPERS 637, 638, 641 (Aug. 8, 1969), *available at* http://www.presidency.ucsb.edu/ws/index.php?pid=2191 (proposing a system that would "establish a work requirement and a work incentive" as a "complete replacement of the present welfare system"); *see also* Bird-Pollan, *supra* note 59, at 252 ("The EITC was instituted in response to the Family Assistance Plan . . . ." (internal quotation marks omitted)); Zelenak, *supra* note 20, at 304 (noting that the EITC followed Nixon's failed Family Assistance Plan proposal).

income tax" in the United States.[72] Under Nixon's FAP proposal, families with children were eligible for a maximum benefit payment of $500 each for the first two family members and $300 for each additional member.[73] Families had to show that they were attempting to find work, but they did not have to actually be working to receive the money.[74] FAP also allowed families to keep the first $720 of any earnings, in addition to half of any further income up to $4000, and still be eligible for FAP.[75] FAP was a political failure, garnering strong criticisms that it created a work disincentive; it was ultimately defeated in the Senate.[76]

Senator Russell Long (D-LA)—chair of the Senate Finance Committee[77] at the time FAP was being debated and who advocated against it—proposed an alternative to FAP in 1972 that required recipients to earn income in order to receive the credit.[78] Ultimately, due in large part to Long's efforts, the EITC was enacted as part of the Tax Reduction Act of 1975.[79] Before the 1990s, the EITC remained a fairly small program, with Congress making only minor adjustments.[80] However, in the 1990s, as President Clinton began a major push to reform welfare, the EITC gained national prominence.[81]

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72 Zelenak, *supra* note 20, at 302–03. Milton Friedman noted that the tax system could be used to give a subsidy to an individual who earned a gross income less than the total of her exemptions plus deductions (in other words, her negative taxable income); the amount of the subsidy would be a percentage of her negative taxable income. *See* Milton Friedman, Capitalism and Freedom 191–92 (40th anniversary ed. 2002). For example, an individual with an income of $2000 and a standard deduction and personal exemption totaling $12,000 would have a negative taxable income of $10,000. If her negative income tax rate were 50%, she would receive a subsidy of $5000. Under Friedman's proposal, the rates of subsidy could be graduated to set a maximum limit to the subsidy amount. Even a person with no income at all would receive the subsidy. *See id.*

73 H.R. Rep. No. 91-904, at 3 (1970).

74 *See id.* at 20–23 (requiring work registration and nonrefusal of suitable work but not requiring work itself).

75 *See id.* at 4 (listing the criteria for determining a family's eligibility and amount of benefit).

76 *See* Bird-Pollan, *supra* note 59, at 253 (discussing the specific features of FAP that led to its defeat).

77 Long was chair of the Senate Finance Committee from 1966 to 1981.

78 Bird-Pollan, *supra* note 59, at 253.

79 *Id.*; Tax Reduction Act of 1975, Pub. L. No. 94-12, § 204, 89 Stat. 26, 30–32 (codified as amended at I.R.C. § 32).

80 *See* Bird-Pollan, *supra* note 59, at 253–54 ("In 1986, the EITC was indexed for inflation and made a permanent . . . part of the tax system. In 1990, Congress made a larger credit available for families with two or more children . . . .").

81 *See* Alstott, *Limitations*, *supra* note 18, at 533–34 (noting that the EITC had "recently assumed a central role in U.S. social welfare policy" and that its 1993 expansion was "a key feature of President Clinton's plan for welfare reform").

C. The Rise of the EITC and the Fall of Welfare

In 1996, "welfare as we [knew] it"[82] ended. The Aid to Families with Dependent Children (AFDC) entitlement program was replaced by TANF, which imposed strict time limits and participation requirements on beneficiaries.[83] Predictably, the number of families receiving welfare plummeted from roughly 4.5 million in 1996[84] to only 1.9 million in 2011.[85] The complete story of the politics of welfare reform and the rise of the EITC has been ably told elsewhere[86] and is beyond the scope of this Article, but nonetheless the basic story is important to consider when assessing the EITC.

By the early 1990s, there was bipartisan consensus behind a work-based welfare program and almost no support for continuing welfare as an entitlement program.[87] The political tide had changed such that the goal of federal poverty programs became "making work pay."[88] Indefinite entitlement programs such as welfare were scorned, and "individual responsibility" and "economic self-sufficiency" became key terms of the rhetoric surrounding federal antipoverty programs.[89]

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82 When President Clinton enacted welfare reform by signing TANF into law, he said, "Today, we are ending welfare as we know it." Barbara Vobejda, *Clinton Signs Welfare Bill Amid Division*, WASH. POST, Aug. 23, 1996, at A1, *available at* http://www.washingtonpost.com/wp-srv/politics/special/welfare/stories/wf082396.htm.

83 *See* MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 21–22 (1999) (discussing the history and consequences of the 1996 enactment of TANF).

84 Office of Family Assistance, *1996 AFDC Total Caseload*, ADMIN. FOR CHILD. & FAM. ARCHIVES, http://www.archive.acf.hhs.gov/programs/ofa/data-reports/caseload/afdc/1996/fycytotal96_ek.htm (last updated Dec. 19, 2004).

85 Office of Family Assistance, *Fiscal and Calendar Year 2011 - TANF: Total Number of Families*, ADMIN. FOR CHILD. & FAM. (Apr. 3, 2012), http://www.acf.hhs.gov/programs/ofa/resource/2011-family-tan.

86 *See generally* REBECCA M. BLANK, IT TAKES A NATION: A NEW APPROACH TO FIGHTING POVERTY 220–51 (1997) (describing in detail the story of welfare reform); Alstott, *Limitations*, *supra* note 18, at 536–40 (describing the rise of the EITC in an environment of bipartisan anti-welfare rhetoric); Vicki Lens, *Public Voices and Public Policy: Changing the Societal Discourse on "Welfare*,*"* 39 J. SOC. & SOC. WELFARE 137, 137–46 (2002) (discussing the politicized language that comprised the discourse on welfare reform).

87 *See* GWENDOLYN MINK, WELFARE'S END 1–6 (1998) ("Both parties championed wage work and marriage as alternatives to welfare . . . . Both parties equated welfare use with welfare abuse, justifying increasingly punitive 'reforms.'"); *see also* Alstott, *Limitations*, *supra* note 18, at 537–38 & 538 nn.13–18 (noting widespread support for promoting work, rather than entitlement, for welfare programs).

88 *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 287 (discussing the political slogan "making work pay" as a representation of the goal that low-income individuals be induced to work to receive the benefits of EITC); *see also* Alstott, *Limitations*, *supra* note 18, at 538 ("[T]here is an apparent political consensus in support of reforms that in some way link welfare and work.").

89 *See* Lens, *supra* note 86, at 144–46 (discussing how political elites used morally charged language to frame the ideological debate on welfare reform); *see also* MINK, *supra*

One of the leading critiques of welfare was that it created financial disincentives to work and to accumulate assets, thus reducing the chances of long-term mobility for the poor.[90] There was a related concern that welfare provided help for the non-working poor, but that

note 87, at 4 (discussing the view that poverty is a result of "moral failing"); Alstott, *Limitations*, *supra* note 18, at 538–39 ("In the current political climate, then, work and responsibility are 'in' and traditional welfare is 'out.'").

[90] *See generally* David T. Ellwood, Poor Support: Poverty in the American Family 121–27 (1988) (arguing that a transitional work program was needed for the poor on welfare); Lawrence M. Mead, Beyond Entitlement 4 (1986) (arguing that welfare recipients will not truly be accepted into American society unless they also work to earn income); Charles Murray, Losing Ground: American Social Policy, 1950–1980, at 154–66 (1984) (arguing that changes to welfare law in the 1960s discouraged work and marriage). In fact, a similar concern was raised about the EITC in its early years. A recipient earning income in the EITC phase-out range has some disincentive to work because each extra dollar earned could result in a loss of over fifty cents of aid. Critics predicted that the disincentive effect would be substantial. *See* Edgar K. Browning, *Effects of the Earned Income Tax Credit on Income and Welfare*, 48 Nat'l Tax J. 23, 23 (1995) (estimating that "nearly half of recipients in the phase-out range will reduce earning enough so that their total disposable incomes decline"); Marvin H. Kosters, *The Earned Income Tax Credit and the Working Poor*, Am. Enterprise, May–June 1993, at 64 ("Early research had concluded . . . [that] the EITC would significantly reduce cumulative hours worked for low-income individuals."); Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit*, *in* Making Work Pay: The Earned Income Tax Credit and Its Impact on America's Families, *supra* note 30, at 15, 40–41 (stating that according to early research, the EITC reduced cumulative hours worked for low-income individuals when in the phase-out range) (citing *Select Aspects of Welfare Reform: Hearing Before the Subcomm. on Select Revenue Measures & Subcomm. on Human Res. of the H. Comm. on Ways & Means*, 103d Cong. 106–16 (1993) (statement of Marvin H. Kosters, Director, Economic Policy Studies, American Enterprise Institute)). However, empirical studies of actual data from the first years after the EITC expansion indicated that this concern was overblown; researchers found no significant impact on hours worked. *See, e.g.*, Nada Eissa & Jeffrey B. Liebman, *Labor Supply Response to Earned Income Tax Credit*, 111 Q.J. Econ. 605, 629–36 (1996) (finding that the EITC expansion did not reduce aggregate hours worked, with the implication that the phase-out range did not meaningfully disincentivize work). Studies also found that the EITC expansion significantly increased aggregate labor-force participation among single workers, thus verifying the predicted incentive effect provided by the EITC's phase-in range. Jeffrey B. Liebman, *The Impact of the Earned Income Tax Credit on Incentives and Income Distribution*, 12 Tax Pol'y & Econ. 80, 97–104 (1998) (expanding on his earlier 1996 study with co-author Eissa on labor-force participation, Eissa & Liebman, *supra*, which yielded the same result). The findings from this study are consistent with those of the empirical studies above. The traditional economic concern about work disincentives assumes that recipients have full knowledge of exactly how the EITC works, including when the phase-out range begins, but the majority of recipients in this study did not. Indeed, most families did not know the exact amount of their refund beforehand. Laura Tach, Tax Time 25 (2009) (unpublished manuscript) (on file with the *New York University Law Review*). The concern also assumes that EITC recipients are able to game the system by controlling the number of hours they work. However, most of the recipients in this study had jobs with set hours; they could not say to their employers: "I want to work eight fewer hours per week, so my earnings fall below X level." Not only were they unable to control their income in such a specific manner, they had not even considered doing so. *See id.* at 25–27 (discussing recipients' behavioral responses to refunds).

there was little help available for the working poor.[91] Martin Gilens discusses how the media contributed to a strong public perception that welfare recipients were lazy women who would rather be siting at home watching television and waiting for their welfare checks than working.[92]

At the same time that welfare reform was in the works, then-President Clinton and other politicians gave speeches praising the EITC and adopting strong anti-welfare tones.[93] In President Clinton's 1994 State of the Union address, he said that the EITC "reward[s] work over welfare . . . . Now that's real welfare reform."[94] Clinton later called the EITC "a cornerstone of our effort to reform the welfare system and make work pay."[95] For the most part, since the push for welfare reform, the EITC has enjoyed bipartisan support[96]—largely because commentators believe it is everything the old welfare system was not.[97] Commentators have expressed support for the EITC because they believe it is not stigmatizing, it may help with asset accumulation, and it increases autonomy.[98] Steve Holt of the Brookings Institution argues that "the EITC has proved remarkably successful in reducing poverty. . . . lift[ing] more children out of poverty than any other social program or category of programs."[99] The

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91 *See* Ellwood, *supra* note 90, at 98–104 (noting the lack of help available for the working poor during the welfare era).

92 *See* Gilens, *supra* note 83, at 3 (arguing that "Americans hate welfare because they view it as a program that rewards the undeserving poor" due to a "widespread belief that most welfare recipients would rather sit home and collect benefits than work hard to support themselves"); *see also id.* at 102–32 (detailing how the media contributed to the negative public perception of welfare).

93 *See* Alstott, *Limitations*, *supra* note 18, at 539.

94 William J. Clinton, Address Before a Joint Session of the Congress on the State of the Union, 1 Pub. Papers 126, 129 (Jan. 25, 1994), *available at* http://www.gpo.gov/fdsys/pkg/PPP-1994-book1/pdf/PPP-1994-book1-doc-pg126-3.pdf.

95 Memorandum on the Earned Income Tax Credit, 1 Pub. Papers 413, 413 (Mar. 9, 1994), *available at* http://www.gpo.gov/fdsys/pkg/PPP-1994-book1/pdf/PPP-1994-book1-doc-pg413.pdf.

96 *See supra* note 29. While the EITC generally enjoys widespread bipartisan support, a few politicians on the far right have voiced concerns that it is too generous—essentially welfare with a different name. For example, Rep. Bill Archer (R-Tex.) asked, "Is it fair to ask middle-income taxpayers to give additional public assistance to those who pay little or no taxes?" Ventry, *supra* note 90, at 35.

97 *See* Alstott, *Limitations*, *supra* note 18, at 539 (noting support for the EITC because it avoids many of the perceived weaknesses of welfare).

98 *See, e.g.*, Ellwood, *supra* note 90, at 115 ("The EITC helps the working poor while mainly avoiding the conundrums [of welfare]. The rewards of work are increased, not diminished. . . . People are helped without any need of a stigmatizing, invasive, and often degrading welfare system, and their autonomy is increased, not decreased.").

99 Steve Holt, Brookings Inst., The Earned Income Tax Credit at Age 30: What We Know 13 (2006), *available at* http://www.brookings.edu/~/media/research/files/reports/2006/2/childrenfamilies%20holt/20060209_holt.pdf.

EITC has been described as a "time-honored policy tool for improving tax fairness, one that enjoys strong, bipartisan support and targets direct relief to the families who need it most."[100] Congress has approved several major increases in funding for the program while spending for other cash-spending programs has remained flat.[101] Most recently, the American Recovery and Reinvestment Act (ARRA) increased EITC benefits for families with three children and increased the amount of money that married couples can earn before they enter the phase-out range.[102] The Tax Relief and Job Creation Act of 2010 extended these program expansions through 2012.[103]

D. *Lack of Clear Congressional Intent and Past Scholarly Study*

As Bird-Pollan and other scholars noted, "[o]ne of the greatest difficulties facing anyone studying the EITC is the lack of any explicit [c]ongressional purpose for the credit."[104] Put another way, Lawrence Zelenak writes, "Despite the political success of the EITC, the credit remains severely undertheorized. Although Congress has revised the credit a number of times, it has never accompanied those revisions with legislative history explaining the purpose of the credit, except in the vaguest and most general terms."[105] The lack of clear congressional intent makes for varied scholarly treatment of the EITC. There are two main threads of EITC commentary. First, some scholars ask who should (and should not) receive the EITC and focus on how to calculate the amount recipients should receive.[106] This body of

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100 Letter to the Editor, *Fairer Tax Treatment*, CHI. TRIB., Apr. 16, 2009, *available at* http://articles.chicagotribune.com/2009-04-16/news/0904150556_1_income-tax-tax-time-tax-day.

101 Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 285.

102 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1002, 123 Stat. 115, 312 (amending 26 U.S.C. § 32).

103 Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 103, 124 Stat. 3296, 3299 (codified at 26 U.S.C. § 32(b)(3)(A) (2012)).

104 Bird-Pollan, *supra* note 59, at 258; *see also id*. at 284 ("One significant hurdle faced by supporters of the EITC and those who propose maintaining and expanding the credit lies in the continuing lack of an explicit purpose."). Analyzing what information is available in an attempt to infer intent, Bird-Pollan concludes that the original intent may have focused on offsetting payroll taxes for very low-income earners. Later, however, there seems to be evidence that Congress was focused on supplementing the income of working families whose earnings level kept them below the poverty line and easing the burden experienced by those who lost their welfare subsidies as they began working. *See id.* at 259–60, 284. However, these conclusions are inferences made by piecing together many different documents, and Bird-Pollan acknowledges that intent is by no means transparent. *Id.* at 284.

105 Zelenak, *supra* note 20, at 301.

106 For example, Lawrence Zelenak argues that the EITC "should be revised to function as an adjustment to the minimum wage based on family size, designed to ensure that no

literature, as a whole, focuses on the big questions of "who?" and "how much?" and tackles problems such as an inherent marriage penalty in the EITC and the fact that it does not treat different family structures equally.[107] These types of questions and proposals are vital and deserve further thought, but my data are not suited to directly contribute to this project, and these questions are not the focus of this Article.

The second strain of literature discusses EITC administration. Much of this work focuses on whether the IRS is the best place to house income transfer programs such as the EITC. The main problems are that the EITC does not appropriately measure wealth (since qualification is dependent only on income, not savings and assets);[108] that the EITC may not reach people who qualify but do not file taxes;[109] and that the EITC fosters noncompliance and fraud.[110]

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family headed by a working parent lives in poverty, regardless of the number of children in the family." *See* Zelenak, *supra* note 20, at 302. Jane Gravelle argues that the EITC should be designed so that families with equal pretax standard of living also have equal after-tax standards of living. JANE G. GRAVELLE, CONG. RESEARCH SERV., FEDERAL INCOME TAX TREATMENT OF THE FAMILY 12 (2006), *available at* http://www.policyarchive.org/handle/10207/bitstreams/3032.pdf. Lily Batchelder argues for an increase in EITC benefits for most families through a different channel: She analyzes data to show that "taxation of annual income disproportionately burdens low-income families" and advocates "Targeted Averaging," which would allow taxpayers to calculate their EITC benefits based on two years of income and to "carry back for one year of their unused standard deductions and personal and dependent accounts." Batchelder, *supra* note 7, at 397.

107 In a related question, Anne Alstott asks whether the EITC can truly make a meaningful difference in lifting low-income families out of poverty. Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 289–97. My data confirm several of Alstott's critiques of the EITC, including her concern that it is unresponsive to financial shocks experienced by low-income workers. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 302–04. However, my data also show that there are other reasons to salvage the credit that focus less on strict economic consequences and more on the dignity of low-income workers and the sense of purpose they get from working and receiving tax credits. My proposal attempts to transform the EITC into a program that addresses this concern in ways workers suggest they would want help. This is not to dispute the validity of many of Alstott's concerns. My proposal simply considers the voices of current EITC recipients while attempting to mend what both Alstott and I believe is a broken safety net. My data speak only to those who are already receiving the EITC; within this group, the EITC is universally liked and has many benefits. It is in this context that I seek to improve it.

108 Alstott, *Limitations*, *supra* note 18, at 571–76 (discussing problems with how the income tax system measures income and not wealth, meaning it "cannot comprehensively assess total economic resources").

109 *See* George K. Yin et al., *Improving the Delivery of Benefits to the Working Poor: Proposals To Reform the Earned Income Tax Credit Program*, 11 AM. J. TAX POL'Y 225, 253 (1994) (discussing various reasons why those who qualify for the EITC may not access benefits). *But see* Alstott, *Limitations*, *supra* note 18, at 585–86 ("[A]vailable data confirm that the EITC has relatively high participation rates. . . . [T]he EITC participation rate is still substantially higher than participation rates in traditional income-transfer programs.").

While this Article does not address the technical issues these concerns raise, my data show that based on the experiences and desires of EITC recipients, there are strong advantages to keeping the EITC within the realm of the IRS. At a minimum, my data show that going back to a system that resembles the old welfare system would not be desirable and may have unintended negative consequences for current EITC recipients.[111]

This Article primarily evaluates the EITC from a different vantage point. Rather than starting with a complex academic analysis of what the credit should do, it starts from the ground up—with the voices of EITC recipients. The data help shed light on the role of the EITC in the lives of low-income workers. I use these data to evaluate how the EITC can be used to help low-income working families in the ways they say they need it most and how it can serve as a renewed public safety net to help catch them in these unstable economic times. The lack of clear congressional guidance with regard to the EITC's implementation underscores the need to understand the role of the EITC from the viewpoint of recipients. My Article begins this project.

III
"Thank God for Tax Season": The EITC and Welfare from the Recipient's Point of View

The merits of the EITC over welfare have received much commentary, but one important perspective was missing: that of recipients. By better understanding how the recipients think about both welfare and the EITC and the role of the EITC in their lives, policy makers can design changes to the program that take into account the cultural and behavioral responses of recipients. If these policy innovations take into account the perspectives of those they are designed to serve, they may be more effective.

When asked to evaluate the EITC, recipients' assessments were overwhelmingly positive. Responses such as, "Thank God for tax

110 *See* Alstott, *Limitations*, *supra* note 18, at 586–87 (discussing the aspects of the EITC program that make it particularly vulnerable to fraud); Yin et al., *supra* note 109, at 247–50 (noting concerns and statistics about noncompliance, including people overclaiming the credit and filing when they do not qualify).

111 This is not to say that the EITC adequately replaces welfare (TANF) for all potential recipients. This Article can only help us understand the role of the EITC in the lives of current recipients. There are likely many missing parties—those that do not qualify or do not file for the EITC may be in desperate need of other programs to keep them and their children from dire circumstances. These people are not part of the sample in this dataset, and thus the Article cannot examine how to best address their needs.

season"[112] and "It was like hitting the lottery for us"[113] were typical. One respondent said, "I think about [the refund] all year long, you know what I mean, it's like oh, I can't wait until I get my tax money . . . ."[114] No matter how families used the extra income, their normative evaluations of the refund were similar—they did not feel stigmatized because they received the EITC.[115] Instead, they were proud that they had worked hard, as higher-income families do, to receive their tax refund.[116]

The majority of respondents felt both deserving and appreciative of the EITC—they viewed it as a reward for hard work.[117] One respondent stated, "I think it works out fine. . . . I can't complain! I mean it's somethin', you know, it's somethin'. I mean, you could get back nothing."[118] Another said, "I actually think the Earned Income Tax Credit works very well . . . . Because it puts a little more money in the family's pocket, you know. That's about it, that's the best thing that you could do . . . very helpful."[119] These sentiments were typical of the majority of respondents.

Just how much respondents feel the credit helps with their financial situation varies, but almost all of them agree that it "helps out a lot."[120] As one respondent explained: "It's just nice to know that it's coming, that, you know, you can relax for a little bit and you have that extra money in your pocket."[121] Another respondent said that the EITC helped her "[j]ust get a little ahead of the game . . . . Just breathe a little better. . . . What a feeling. . . . It made it a lot easier."[122]

Respondents reported favorable feelings toward the EITC not just because it provides much-needed financial relief, but also because it allowed them to feel, as one respondent said, like "a real American."[123] Terms such as "taxpayer," "earner," and "hard worker"

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112 Interview with Respondent 44 (July 2, 2007).

113 Interview with Respondent 59 (June 27, 2007).

114 Interview with Respondent 57 (Sept. 12 & 26, 2007).

115 No respondent (out of the 194) reported feeling stigmatized because they received the EITC.

116 *See* Jennifer Sykes et al., Dignity and Dreams: What the Earned Income Tax Credit (EITC) Means to Low-Income Families 30 (Feb. 22, 2012) (unpublished manuscript) (on file with the *New York University Law Review*) (noting, based on analysis of the data used in this Article, that EITC recipients view the EITC as a reward for hard work).

117 *Id*.

118 Interview with Respondent 41 (Aug. 16, 2007).

119 Interview with Respondent 29 (July 23, 2007).

120 Interview with Respondent 92 (Sept. 8, 2007).

121 *Id*.

122 Interview with Respondent 2 (July 16, 2007).

123 Sykes et al., *supra* note 116, at 29.

were common in the narratives that respondents invoked when describing themselves as wage-earning EITC recipients.[124]

The EITC also allowed respondents to feel—if only for a short time—as if their children were ordinary American kids,[125] and allowed them to give their children small treats, which made the kids feel "like a million dollars."[126] One respondent, for example, noted that her children usually get "what they need, but they may not like it."[127] With the EITC, however, she "was able to take them to the store and let them pick their clothes."[128]

Respondents' feelings about the EITC were in stark contrast to their feelings about welfare. Indeed, there is significant evidence that welfare recipients disliked the program,[129] despite the public perception to the contrary.[130] In this study, the respondents' sentiments were no different. Both respondents who had been on welfare in the past and respondents who were on welfare at the time of the interview (only 7%) all had an overwhelmingly negative stereotype of the "welfare lifestyle" as portrayed by the popular media.[131] Respondents across the board discussed welfare using a moral rhetoric, with great contempt for those they perceived as taking advantage of the system. For example, when one respondent was asked about welfare, she said, "[T]here's people out there who really can work and they're getting all this welfare . . . so we're paying [them] money when they are really

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124 *Id*. For a detailed discussion of the findings about the social meaning of the EITC to recipients based on this data, see *id.* at 28–33, in which the authors argue that EITC recipients view the EITC as just reward for their work and that the EITC enhances feelings of citizenship and social inclusion.

125 *Id.* at 20.

126 Interview with Respondent 64 (July 11, 2007); *see also* Sykes et al., *supra* note 116, at 20–22 (arguing that the EITC validates parents' identities as providers and, thus, parents spend a small amount of the refund on treats for their children).

127 Interview with Respondent 64 (July 11, 2007).

128 *Id.* Another respondent talked about going out to lunch once or twice with her daughter: "once to Uno's and once to Friday's because we want[ed] to try it out. . . . That's what we did a couple of times . . . . Go places that you don't go on a regular basis." Interview with Respondent 14 (June 30, 2007). While many respondents spent a portion of their refund on these kinds of "treats" for their children to make them feel less impoverished and more like ordinary children, the percentage of the refund spent on such consumption was very modest—on average only 11%. Sykes et al., *supra* note 116, at 19.

129 *See, e.g.*, EDIN & LEIN, *supra* note 48, at 76–78 (finding that the majority of mothers they studied wanted to work and had plans to leave welfare as soon as they felt they were able); WILSON, *supra* note 30, at 85 (finding that welfare was not a desirable alternative to work for poor mothers and noting that 80% of mothers in his sample who received AFDC answered that they received it because of the shortage of "decent" jobs rather than in order not to work).

130 *See* GILENS, *supra* note 83, at 2–3 (arguing that there is a public perception that welfare recipients were lazy and enjoyed being on welfare so that they did not have to work).

131 *Id.*

able to work."[132] She was careful to note that she might fall on hard times too, but continued, "God forgive me because I don't like to, you know, criticize. I don't know where I might be tomorrow, too . . . . They just spent their money bing-banging, doing whatever out on the street. . . . So how easy is it for them to get state money that we're paying for them?"[133] Respondents who had previously received welfare drew moral boundaries between themselves and other welfare recipients that they perceived as immoral. They described their welfare experiences as necessary and a result of bad luck, in contrast to others, who were lazy.[134] One respondent said, "It was the worst. . . . I'm not lazy. I like my own. I really don't like for people to help me unless I really need it. And it was at that time, I did."[135] Another explained that she needed welfare to care for her injured daughter. She said, "I had to take care of [my daughter] . . . she couldn't use her hand so I had to take a couple of months off for her. I had to go on welfare so at that point I did go on welfare . . . for my daughter."[136]

The universal sentiment of respondents was that they disliked being on welfare and wanted to avoid it at all costs. Most respondents reported feeling shame and self-loathing when they did go on welfare. One respondent said, "[E]very time I used it, though, I felt like crap . . . ."[137] Another respondent said that she was so resistant to using welfare that "[i]t actually took somebody to physically take me by the hand and make me go there. I just, I didn't want to. . . . I didn't tell anybody. I was very embarrassed. I hated it."[138] One immigrant respondent said, "I'm coming from different part, they teach me, you have to work for whatever you want. . . . I don't like easy way sometime. . . . I pray to God, never go to welfare. I know it's nothing, but I know some people go over there, and they don't need it."[139] Several respondents talked about the lack of independence they felt when on welfare. A dialogue between a husband and wife demonstrates this sentiment:

> *Wife*: I never want to be on welfare ever. . . . It definitely wasn't enough, and I just didn't like the whole idea of being on welfare, like I didn't want to do it kind of thing, but you do what you have to. . . .
>
> *Husband*: I think she might have been out of work.

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132 Interview with Respondent 46 (Aug. 9, 2007).
133 *Id.*
134 *See, e.g.*, *id.* (describing one respondent's negative opinion of welfare respondents).
135 Interview with Respondent 81 (Aug. 26, 2007).
136 Interview with Respondent 98 (Oct. 15, 2007).
137 Interview with Respondent 57 (Sept. 12 & 26, 2007).
138 Interview with Respondent 44 (July 2, 2007).
139 Interview with Respondent 43 (July 11, 2007).

. . .

Wife: I just didn't like the whole . . . .

Husband: It's depending on other people. That's what it is.

Wife: And I like to depend on myself.[140]

Another respondent talked about the lack of privacy when on welfare. She said, "[Caseworkers] get on your case all the time . . . 'come in the office, come in the office, come in the office.' . . . I think [the caseworkers] look at you like you're no good because you're on assistance. . . . I don't think she respected me. . . . They were making me look like a liar . . . ."[141]

What is striking about the welfare dialogue of the respondents is that it mirrors the political debate surrounding welfare reform in 1996. Caricatures of lazy women—taking advantage of the system while buying themselves fancy clothes, meals, and drugs and making sure to have a baby every two years to stay in the system—appeared frequently in responses. One respondent, talking about her neighbors, said: "[L]ike the family over there. They're on welfare, that's fine. Whatever. Everyone got to do what everyone got to do. But they take their check and spend it on drugs and addiction. . . . So it's kinda like, it's going to the wrong hands."[142] Another respondent commented on others whom she perceived as having more children just to increase their welfare refunds, "I just be like looking at these girls like, wow, you know all these kids. . . . [T]hey are going to cut welfare so what are all of you going to do? . . . I'm not lazy like that; I will get a job."[143]

These caricatures are largely absent from the political discourse today, but they have remained embedded in the discourse of lower-income families and shape their current beliefs and actions.[144]

One respondent summed up what we heard from the majority of respondents about their welfare experiences:

Interviewer: [W]hat was [receiving welfare] like?

Respondent: Terrible. . . . I'll never do it again. . . . [I]t was the worst experience. . . . I lived with my cousin, my mom threw me out after I had [my son], and I lived with my cousin and my checks were

140 Interview with Respondent 56 (Aug. 22, 2007).

141 Interview with Respondent 21 (Aug. 14, 2007).

142 Interview with Respondent 54 (July 4, 2007).

143 Interview with Respondent 12 (July 10, 2007).

144 It is important to note that in light of current welfare rules, welfare can no longer be a "lifestyle" because benefit receipt time is limited; is often contingent on performing a job search, work, or volunteer activity; and in many states has been capped in such a way that having an additional child does not usually give recipients higher benefits. However, despite these changes, welfare receipt remains highly stigmatized among EITC recipients. *Id.*

> getting sent back to the welfare office because my name wasn't on the mailbox. They sent fraud out at me, oh my God, it was the worst. . . . [A]nd I'm like, "Oh, fuck this." I went and got a job and got off of it. Got off and worked ever since. . . . It was terrible. I'll never go back to them places again. Never. It's not for me. . . . I would never go back. . . . It was terrible. I swore I would work the rest of my life. I didn't care how I worked or where I worked, I would never go back there again. Never. And I didn't.[145]

Quantitative data lends further support to what respondents told us: They are comfortable with the EITC, but are resistant to seeking out welfare, even when they might need it. Roughly 80% of taxpayers who qualify receive the EITC,[146] whereas only 50% of those who qualify for TANF receive it.[147]

Per the available data, the EITC appears to be very successful. Low-income families much prefer the EITC to welfare, and the EITC seems to have had the effect that many politicians and scholars hoped for:[148] Families receiving the EITC are resolute in their desire to avoid welfare and continue working.

Not only does the EITC have overwhelming support, but in 2010, the EITC lifted about 6.3 million people out of poverty including 3.3 million children.[149] Indeed, more children now exit poverty through the EITC than through any other form of government assistance.[150] However, the EITC reached 26.8 million people and families in 2011, but many millions are still living in poverty. The question is why the EITC is insufficient to help these other families. In the next Part of this Article, I turn to this question, looking specifically at what happens to EITC recipient families when they experience financial shocks.[151]

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145 Interview with Respondent 62 (Aug. 9, 2007).

146 Internal Revenue Serv., *About EITC* (Jan. 18, 2013), http://www.eitc.irs.gov/central/abouteitc/.

147 Sheila R. Zedlewski, The Urban Inst., Left Behind or Staying Away? Eligible Parents Who Remain off TANF 1 (2002), *available at* http://www.urban.org/uploadedPDF/310571_B51.pdf. There are other explanations, such as differences in the administrative procedures to obtain benefits from each program, which may also contribute to these different usage rates. *Id*.

148 *See supra* note 89 and accompanying text (discussing political and academic rhetoric that work should be rewarded and promoted over entitlement programs such as welfare).

149 Ctr. on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit 2 (2012), *available at* http://www.cbpp.org/files/policybasics-eitc.pdf. This statistic was calculated using the official poverty line in the United States. For an important discussion of whether the poverty line is a useful tool for evaluating the EITC's success, see Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 291–97.

150 Ctr. on Budget and Policy Priorities, *supra* note 149.

151 Eighty-five percent of respondents in this study reported experiencing a financial shock. *See infra* Part V (discussing the financial shocks experienced by respondents).

IV
Financial Shocks and the New Safety Net

A. The Dangers of Financial Shocks in the Post–Welfare Reform Era

At the same time that poor families shifted from the entitlement program of welfare to the work-based EITC (and a downsized work-based welfare), all Americans became less income-secure. Indeed, income insecurity, defined as the risk of experiencing a period of poverty, has grown over the last decade.[152] It is important to recall just how significant the growth has been: In the 1980s, 13% of Americans spent one year below the poverty line; by the 1990s, this number grew to 36%.[153] Additionally, the probability that an average working-age individual will experience at least a 50% drop in family income increased from 7% in the 1970s to 17% by 2002.[154]

Past research provides insight into "trigger events," which cause emergency expenses for low-income people and thereby increase the likelihood of families entering poverty. Trigger events that pose the greatest risk of entry into poverty are changes in household composition, changes in employment status, and changes in disability status.[155] Several other events have strong associations with entry into poverty, including transition to a female head of household, young adults setting up their own household, and a child being born into the household.[156]

Analysis from this study shows that changes in medical or disability status (relating to both physical and mental health issues), complications from pregnancy or birth of a child, changes in employment

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[152] *See supra* note 6 and accompanying text (discussing increasing financial instability among American families).

[153] Newman & Chen, *supra* note 5, at 178.

[154] Hacker, The Great Risk Shift, *supra* note 12, at 31–32.

[155] *See* Mary Jo Bane & David T. Ellwood, *Slipping into and out of Poverty: The Dynamics of Spells*, 21 J. Hum. Resources 1, 13–17 (1986) (comparing how trigger events affected families with different household compositions); Signe-Mary McKernan & Caroline Ratcliffe, *Events that Trigger Poverty Entries and Exits*, 86 Soc. Sci. Q. 1146, 1167 (2005) (concluding that changes in household composition, employment, and disability entitlements were important trigger events). For a discussion of the effects of multiple trigger events on poverty persistence, see Ann Huff Stevens, *Climbing out of Poverty, Falling Back In: Measuring the Persistence of Poverty over Multiple Spells*, 34 J. Hum. Resources 557 (1999).

[156] Bane & Ellwood, *supra* note 155, at 16; *see also* Blank, *supra* note 86, at 5 (1997) (discussing factors that put families headed by single mothers at risk for poverty); Patricia Ruggles & Roberton Williams, *Transitions in and out of Poverty: New Data from the Survey of Income and Program Participation* (U.S. Census Bureau, Working Paper No. 38, 1987), *available at* http://www.census.gov/sipp/workpapr/wp38_8716.pdf (examining six trigger events and their correlation with entry into poverty).

status, relationship issues (including domestic violence, divorce, and separation), death of a family member, incarceration of a partner, family network breakdown or burden, being the victim of a crime, car repairs, home repairs, loss of housing, public assistance issues, loss of child support, and banking issues are among the most common shock events experienced by EITC recipients. Eighty-five percent of respondents in this sample reported experiencing at least one of these shock events; the majority of respondents experienced two or more.

Prior to welfare reform, families could turn to welfare for temporary financial relief in the case of a shock event.[157] Now, policies have changed such that the public safety net of welfare is no longer available for families who have "timed out" of welfare and is more limited and stigmatized for families who have not timed out.[158] What has not changed, and in fact has worsened, is the fragility of the financial position of low-income families. Most of these families live paycheck to paycheck, making just enough (or in many cases not enough) to pay their bills, keep their apartments, and provide basic necessities for their children.[159]

For these families, one unexpected shock event can derail years of hard work toward the slow climb out of poverty. As these families have transitioned to work, they have become even more vulnerable because welfare was, for the most part, stable income, even when financial shocks occurred. Now, as workers, when a shock event results in job loss, their income will often crash to zero. Few of them have the savings necessary to weather such an event.[160] Indeed, over three-quarters of low-income working families are asset poor,

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[157] *See supra* Parts II.B–C, III (discussing how welfare reform tightened eligibility requirements and how the public discourse surrounding welfare and the increasing stigma associated with it post-reform made respondents less likely to seek welfare as a safety net); *see also* Stephen D. Sugarman, *Income Security when Temporarily Away from Work*, *in* SHARED RESPONSIBILITY, SHARED RISK: GOVERNMENT, MARKETS, AND SOCIAL POLICY IN THE TWENTY-FIRST CENTURY 102, 109–10 (Jacob S. Hacker & Ann O'Leary eds., 2012) (noting that people can turn to welfare during times when they are temporarily without income but that both "stigma and . . . sharply reduced living standards . . . usually accompany welfare enrollment").

[158] *See supra* notes 83–86 and accompanying text (describing the effect of legislative reforms in 1996 that imposed strict time limits and participation requirements on welfare enrollment); *supra* Part III (detailing survey respondents' moral aversion toward reliance on welfare, consistent with anti-welfare rhetoric pervasive in political and media discourse in the 1990s).

[159] *See* Sykes et al., *supra* note 116, at 16 (finding, based on analysis of portions of the data used in this article, that respondents' wages covered only 67.9% of monthly expenditures).

[160] *See* MICHAEL S. BARR, NO SLACK 180 (2012) ("[L]ow- and moderate-income (LMI) households have insufficient income or assets to overcome the financial difficulties that come their way. Put another way, they have no slack.").

meaning that they do not have "enough assets to finance consumption for three months at the federal income poverty level."[161] Without a financial cushion, many families are vulnerable to even one unexpected financial shock—a car breaking down, a broken leg, a sick child who needs someone to stay with them, a divorce, or a job loss—just to name a few.

Some respondents simply timed out of welfare and no longer qualified for it due to the new lifetime time limits. This is particularly a problem for older respondents. Cultural constraints also prevented many respondents from seeking out welfare. As discussed above, the mantra of independence and self-sufficiency that was so important to the passage of welfare reform permeates the thinking of low-income families.[162] The pride and independence of being a worker found by previous studies[163] was reflected in responses both among former welfare recipients and those who have never been on welfare. Respondents felt a sense of self-respect and dignity, and that they were closer to their dream of middle-class status than they were on welfare. Thus, when respondents experienced a financial shock, they tried to avoid welfare because it was embarrassing, and it meant admitting to themselves and others that they failed. Suddenly middle-class status seems less attainable than ever, and the pride they felt diminishes the moment they step into the welfare office. Respondents had created psychological boundaries between themselves and others who have to seek direct income from the government in the form of welfare, and they created an identity based on the fact that they no longer need such help.

When families experience a shock event, the structural constraints of the new welfare system's rules and regulations, coupled with the cultural discourse around welfare, have contributed to the low percentage of families who rely on welfare when they experience a financial shock. In this sample, only 7% of respondents who

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161 Signe-Mary McKernan & Caroline Ratcliffe, Enabling Families to Weather Emergencies and Develop: The Role of Assets 1 (The Urban Inst., Working Paper No. 7, 2008), *available at* http://www.urban.org/url.cfm?ID=411734. If only liquid assets are taken into account, then almost 80% of low-income working families are asset poor. *Id*. If net worth is considered, the numbers are a bit better but still troubling, as approximately 45% of low-income working families are asset poor. *Id*.

162 *See supra* notes 87–97 and accompanying text (describing the policy concerns animating welfare reform under the Clinton Administration); *supra* notes 129–50 and accompanying text (describing respondents' moral aversion toward welfare).

163 *See* KATHERINE S. NEWMAN, NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY, at xv (1999) (arguing that the working poor find dignity and pride in earning a paycheck, even when working jobs that most of society deems unworthy).

experienced a shock event reported that they turned to welfare in their attempt to weather it.

B. The New "Private Safety Net": Staying Afloat with Credit Cards

With welfare participation dwindling and families making the choice to "depend on [themselves],"[164] the question becomes: How do families stay afloat when they experience a financial shock? In other words, what is the fabric of the new safety net?

Former President Clinton and other proponents of the EITC would like to believe that the EITC is the answer.[165] Indeed, when families experienced a shock event around the time they received the EITC, they typically used their refund money to weather it. Some families are able to put off the consequences of their shock event just long enough to use the EITC as a buffer and, thus, avoid catastrophe. Respondents reported using the EITC to cope with 16% of the financial shocks they experienced. One respondent was facing eviction after her drug-addicted boyfriend drained their bank accounts. She said that when she got the EITC, "[A]ll I was thinking about was survival. All I was thinking about was what do I need to do to save this family from eviction. . . . I was so thankful that we were eligible, because I knew that that was going to keep us out of eviction court."[166]

For most families, however, the timing of shock events does not align with tax return season—and thus, they do not have EITC money at their disposal. In that situation, many reported using credit cards as a buffer to get by until they received their tax return.[167] For these families, because the EITC is generally received only once per year, it is most effective in paying off debt that has accumulated due to a shock event, rather than actually weathering the shock itself. At this point, however, late fees and interest have already accumulated, making the debt more difficult to pay off and thus requiring a larger portion of the tax credit to be spent on debt. The EITC is used to help pay off this interest and fees at the expense of savings and mobility. Then, the next year, there are no savings left when another shock event happens, and the cycle continues.

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164 Interview with Respondent 56 (Aug. 22, 2007).

165 *See supra* notes 93–95 and accompanying text (noting that President Clinton discussed the EITC as a positive replacement for welfare).

166 Interview with Respondent 97 (Oct. 14, 2007).

167 Among respondents who had credit card debt at the time of the interview, the average amount was $4638. Laura Tach & Sara Sternberg Greene, "Robbing Peter to Pay Paul": Economic and Cultural Explanations for How Low-Income Families Manage Debt 11 (Dec. 20, 2011) (unpublished manuscript) (on file with the *New York University Law Review*).

The relationship between low-income families and credit cards is a relatively new one. At about the same time that welfare reform passed, another major financial transformation for low-income families was happening: State usury laws that protected customers from excessively high interest rates were weakened.[168] This, in turn, allowed lenders to extend credit to riskier borrowers while utilizing higher interest rates to make up for the increased risk.[169] Credit card companies targeted low-income families who would not have qualified for credit cards before.[170] Lenders engaged in higher risk consumer lending because deregulation made such lending profitable.[171] Indeed, between 1989 and 2001, consumer credit card debt among Americans almost tripled,[172] and credit card debt among very low-income families grew by 184%.[173]

Outreach to low-income families was evident from the finances of the respondents. Over 94% of respondents had an outstanding bill or debt at the time of their interviews, and almost 60% of the respondents had outstanding credit card debt.[174] Respondents attempted to cope with financial shocks by using credit cards (as at least one of their coping strategies) for almost 70% of the shock events they experienced.[175]

The use of credit cards far exceeded any other coping strategy. For 35% of shock events, respondents turned to family and friends for help, for 16% they relied on the EITC, for 8% they sought out

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168 Katherine Porter, *Driven by Debt: Bankruptcy and Financial Failure in American Families*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 6, at 1, 4.

169 *See* David A. Lander, *"It 'Is' the Best of Times, It 'Is' the Worst of Times": A Short Essay on Consumer Bankruptcy After the Revolution*, 78 AM. BANKR. L.J. 201, 204–05 (2004) (noting that advances in credit scoring allowed companies to lend profitably even to high-risk borrowers).

170 Littwin, *supra* note 32, at 453. As Katherine Porter notes, these changes in credit regulation also meant substantially increased debt for middle-class Americans. Porter, *supra* note 168, at 5.

171 Lander, *supra* note 169, at 204–05.

172 TAMARA DRAUT & JAVIER SILVA, DĒMOS, BORROWING TO MAKE ENDS MEET: THE GROWTH OF CREDIT CARD DEBT IN THE '90s 9 (2003), http://www.demos.org/sites/default/files/publications/borrowing_to_make_ends_meet.pdf.

173 *Id.* at 10.

174 Tach & Greene, *supra* note 167, at 10–11, 34. Credit card debt was the most common type of non-investment debt of the sample. *Id.*

175 Each shock event was recorded as a separate event with a separate coping strategy. This number was calculated by counting each time a respondent indicated that they used a credit card to cope with a shock event. Some respondents used credit cards to cope with multiple shock events, and each use was counted as a separate credit card event. Additionally, some respondents used multiple coping strategies to deal with individual shock events. Each coping strategy was recorded and counted. Sixty percent of the sample reported having credit cards, so families with credit cards disproportionately used them to cope with shock events.

unemployment insurance, for 7% they turned to welfare, and for 2% they sought out help from private charities.

Reliance on credit cards is not surprising because credit cards "provide a fast, easy, stigma-free way" of coping with most financial emergencies.[176] Credit cards are particularly useful for families because timing is often so important to them. The majority of the respondents in this study live from paycheck to paycheck and have no savings. If a financial shock occurs that requires immediate action, credit cards can quickly help them avoid financial disaster.

Credit cards provide many advantages over most other alternatives to coping with shock events. Family and friends are generally less reliable than credit cards because community networks of low-income workers tend to be low-income themselves and are therefore often resource-deprived.[177] Even if networks want to help, they do not always have money to lend; and even if they do, it may take them some time to access the money. Additionally, asking for money from family and friends is sometimes associated with shame and embarrassment because it means admitting to the family member or friend that one is in need and cannot provide for oneself.[178] Many respondents talked about avoiding asking for help at all costs. As one respondent said, "I try not to borrow or I don't—well, I don't like to borrow anyway. I mean that would be the last option that I opt out to is asking someone else. . . . I'd rather wait or try to wait out and see if I can find another way . . . ."[179]

Furthermore, credit cards are preferable to seeking help from private charities or public aid because of the stigma and shame associated with asking these organizations for help.[180] I found that many respondents in this study sought to avoid this stigma at all costs. Using a credit card does not entail any stigmatization since respondents perceive that people of all income levels use credit cards.

Credit cards also provide advantages over less stigmatized universal aid programs, such as unemployment insurance. The rules of unemployment insurance make it difficult for low-income workers to

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[176] Littwin, *supra* note 32, at 458; *see also* Kevin T. Leicht, *Borrowing to the Brink: Consumer Debt in America*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 6, at 195, 205 ("Credit card debt is a particularly useful substitute for wages because it can be used to meet everyday or large-ticket expenses.").

[177] Littwin, *supra* note 32, at 460.

[178] *Id.* at 461.

[179] Interview with Respondent 163 (Sept. 25, 2007).

[180] Littwin, *supra* note 32, at 461.

obtain it.[181] Even if they are eligible, public aid programs often require documentation of eligibility and consequently long waiting periods to get the money.[182] As one respondent said, "I get unemployment during the summer because we get laid off and sometimes I have to wait a couple, almost four weeks for unemployment to kick in."[183] Emergencies mean the insured often cannot endure these wait periods, and the only way to avoid disaster is to obtain cash (or credit) quickly. Credit cards are also preferable to government programs and charities because such programs are often targeted to specific shock events, such as unemployment or medical emergencies; other shock events, such as a car repair (necessary for transportation to work) fall outside of aid programs.[184] Credit cards can be used for many different unexpected shock events.[185]

Respondents recognized the utility of credit cards for emergencies, and several held on to credit cards for just that purpose. When asked about credit cards, typical responses included: "I have one major credit card that if anything should go wrong, but otherwise I don't use them";[186] "Mm, mm. You said owe on it now? Uh, uh, I don't try to use it unless it's an emergency";[187] and, "It's not good. I think for emergencies that's nice to have one or two."[188]

Some respondents were able to keep these "emergency" cards relatively free of debt, but many had used them for emergencies and now owed significant money, fees, and interest. For example, one respondent urgently needed dental work. She did not have dental insurance so she "took out a credit card for [her] dental."[189] She now spends $70 each month to try to pay off the credit card debt.[190] This

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181 *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 308 (noting that entitlement programs such as unemployment insurance "contain hidden conditions and rules that disproportionately exclude low-income workers").

182 *See* Littwin, *supra* note 32, at 459–60 & 459 n.29 (noting the extensive documentation requirements and the remaining possibility of denial even for those meeting the requirements).

183 Interview with Respondent 89 (Sept. 1, 2007).

184 Littwin, *supra* note 32, at 461.

185 *Id*. at 462.

186 Interview with Respondent 57 (Sept. 12 & 26, 2007).

187 Interview with Respondent 173 (Sept. 7, 2007).

188 Interview with Respondent 40 (July 1, 2007).

189 Interview with Respondent 23 (July 16, 2007).

190 *Id.* A few respondents talked about being able to work out deals to put off paying for expensive financial shocks until they received their EITC. One respondent's husband worked out a deal with his dentist that allowed him to get the dental work and then pay it off when he received his refund: "[H]e owed dental for . . . a top plate. That was three hundred he owed for that. The guy . . . took the insurance money and the three hundred [my husband] had to pay he waited until we got our taxes and we paid him back." Interview with Respondent 59 (June 27, 2007). Unfortunately, most creditors are not

situation was typical, as 88% of respondents who had credit cards owed some amount of money on them at the time of the interview.

Another respondent and her husband have an "emergency card"[191] and owed money on it after using it for a shock event that did not occur during tax refund season. They described their efforts to keep the card debt-free, but the reality of frequent emergencies made this difficult. They were trying to pay down the balance, however, so that credit would be available in case they needed it.[192] In the following dialogue with the interviewer, the respondent explained this struggle:

> *Interviewer*: So what kind of things does he put on his credit card? Or you guys?
>
> *Respondent*: We just use it for an emergency.
>
> . . .
>
> *Respondent*: He keeps it for like . . . one of the kids gets sick and we need a prescription. We have the open money there. . . . Yeah. That's just an emergency card. Otherwise we have no other credit cards.
>
> *Interviewer*: You don't, OK. Do you know what the credit limit is on that card?
>
> *Respondent*: Three hundred dollars.
>
> . . .
>
> *Interviewer*: OK, and what's the balance?
>
> *Respondent*: It's probably about . . . I'm gonna say two, probably like two thirty now, cause he just mailed them a payment and he used it in June, so . . . .
>
> . . .
>
> *Interviewer*: OK, so he's trying to pay down the balance.
>
> *Respondent*: Yeah, that way if we need something it's open.
>
> . . .
>
> *Respondent*: And we don't want to ask for any, any more credit, because we can't afford it.[193]

For many respondents, the EITC is the way they are able to pay off these debts, and they depend on the lump sum of the EITC to do so. As one respondent said, "I love the lump sum because something always happens. You always need your tax return."[194] Indeed, 84% of respondents in this study used their EITC refund to pay off bills and

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willing to work out arrangements like this. Typically, if someone cannot pay in the bill period, interest begins to accumulate.

[191] Interview with Respondent 56 (June 27, 2007).

[192] *Id*.

[193] Interview with Respondent 59 (June 27, 2007).

[194] Interview with Respondent 44 (July 2, 2007).

debts.[195] Families who spent refund dollars on debt reduced their debt burdens by almost 50%.[196] In some cases, these debts and back bills were the result of a shock event, and the EITC allowed respondents to pay off the debt, fees, and interest and to prevent them from further accumulation:

> *Interviewer*: [Y]ou mentioned that this year one of the things you used your refund check was for paying back the credit card bill. . . . [W]hat did you charge to the Visa card?
> *Respondent*: Hmm, probably like, car repair.
> *Interviewer*: Your car repair was on there?
> . . .
> *Respondent*: It was a major car repair.
> *Interviewer*: And um, so [you just charged it to] the credit card.
> *Respondent*: Mhmm [yes].
> *Interviewer*: And then were you paying it off little by little?
> *Respondent*: Yep, little by little.
> *Interviewer*: And then you just paid off the whole rest of it [with the EITC]? That must have felt good to get off?
> *Respondent*: Yep, yep. Because you don't want to tack yourself much for interest rate, you know?[197]

C. The Dangers of Getting By on Credit

Ruby Mendenhall and colleagues have noted how private, for-profit tax preparation company offices such as H&R Block have in a sense become the new, "privatized" welfare claim office.[198] There is a related role for credit card companies as a kind of new, private, welfare provider. Throughout the year, credit card companies pay out money, and in return they get interest and fees, which the government is indirectly paying to them through the EITC.[199]

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[195] Mendenhall et al., *supra* note 25, at 367. Another study of EITC recipients found that among recipients who spent some or all of their refunds (91%), nearly 80% used their refunds to pay down bills or other debts. Michael S. Barr & Jane K. Dokko, *Tax Filing Experiences and Withholding Preferences of Low- and Moderate-Income Households: Preliminary Evidence from a New Survey*, *in* RECENT RESEARCH ON TAX ADMINISTRATION AND COMPLIANCE: SELECTED PAPERS GIVEN AT THE 2006 IRS RESEARCH CONFERENCE 204 (2006), *available at* http://www.irs.gov/pub/irs-soi/06barr.pdf.

[196] Tach, *supra* note 90, at 39. For a more detailed discussion of planned refund allocations, see Mendenhall et al., *supra* note 25, at 372–74.

[197] Interview with Respondent 38 (July 19, 2007).

[198] *See* Mendenhall et al., *supra* note 25, at 371 ("[I]t is not the welfare office but the for-profit tax preparer that nearly 70% of EITC claimants approach to obtain benefits." (citations omitted)).

[199] Of respondents with credit card debt, 39% used a portion of the EITC to pay an average of 22% of their credit card debt (and the average credit card balance of respondents with some amount of credit card debt was $4638). Other respondents may have

On one hand, this role for credit card companies is admirable. Credit cards can save low-income workers from spiraling immediately into severe financial hardship and potentially losing their homes. Indeed, credit card companies have called the changes in high-risk lending the "democratization of credit."[200] However, the story is not as positive as it may appear on its face, and we are only beginning to see the fallout.

Those with annual family incomes of less than $10,000 saw the largest proportional increase in credit card debt between 1989 and 2001—increasing by 184%.[201] During the 1990s, Americans with incomes below the poverty level nearly doubled their credit card usage, and those with family incomes between $10,000 and $25,000 came in a "close second."[202] Low-income borrowers who cannot pay the full amount of their bill are enormously profitable for credit card issuers.[203] As commentators have noted, "[i]nterest payments account for more than 80% of the profits of credit card issuers, with the remaining 20% coming from annual fees, late fees, over-limit fees, and merchant fees."[204] This statistic is troubling because low-income families have seen a tremendous increase in credit card debt in recent decades. At least in part to solicit more of these borrowers, and thus increase profits, credit card issuers have sent out billions of solicitations.[205] Credit card companies sent out 1.52 billion direct mail solicitations in 1993, and by 2001 this number jumped to 5 billion soliciations.[206]

The relationship between credit and low-income households poses several unique difficulties. Scholars have offered innovative solutions to try to find ways to continue to extend credit to these households while shielding them from some of the most aggressive predatory techniques of credit card companies.[207] These conversations

considered paying off at least part of their credit card debt, but a more pressing expense got in the way. For these families, their interest and fees continue to accumulate.

200 Henry J. Sommer, *Causes of the Consumer Bankruptcy Explosion: Debtor Abuse or Easy Credit?*, 27 Hofstra L. Rev. 33, 37 (1998) (internal quotation marks omitted).

201 Draut & Silva, *supra* note 172, at 9–10.

202 Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, The Fragile Middle Class: Americans in Debt 136–37 (2000).

203 Sommer, *supra* note 200, at 38.

204 Sullivan, Warren & Westbrook, *supra* note 202, at 135.

205 *See* Draut & Silva, *supra* note 172, at 37 ("During the 1990s, the credit card companies sent billions of solicitations . . . to attract new customers."); Sommer, *supra* note 200, at 37–38 (noting that the increase in solicitation was driven by an increase in the profitability of the credit card business, which was due in part to the ability to target low-income, high-risk persons).

206 Draut & Silva, *supra* note 172, at 13.

207 *See, e.g.*, Littwin, *supra* note 32, at 478–79, 485–88 (advocating alternative products called "self-directed credit cards," a form of which would enable credit card users to place

are important and, in the long term, may be a key solution to helping low-income families weather shock events.

However, in this Article, I focus on what the data from my study tell me: Many low-income borrowers who receive the EITC are on a road to financial disaster. Some respondents had stories of experiencing a shock event, using a credit card as a buffer, and then paying off the credit card debt with the EITC.[208] These respondents lose a critical percentage of their EITC to interest and fees instead of using the money for mobility goals, but the credit card allows them to weather the shock event.

Unfortunately, this is not the case for everyone. Another respondent, a forty-nine-year-old grandmother, had no family network support available when she found out her four-year-old custodial granddaughter needed open-heart surgery. She took off six weeks from work to care for her granddaughter. However, she had no money saved to cover expenses and no one to turn to for help, so she accumulated a lot of credit card debt to get by. This respondent was attempting to deal with this debt at the time of the interview, but did not have the money to pay it back and was receiving threatening letters from collectors. She said:

> So I don't know, but if you all are gonna have a training about consolidating your credit, let me know. I really will. I mean it's not that I don't want to pay them, but it's no sense in lying. And then they send me threatening letters like they're gonna take me to court. I wrote one back, take me, I'll be there. I will, I can't lie to them, I don't have it, what do you want me to do. I had to take off work for like six weeks because when my grandbaby had open-heart surgery. I don't know where you all want me to get the money from. Yeah, my mother say you can't get blood from a turnip so there's nothing I can give them, you know.[209]

As low-income families provide high profits to the credit industry because they provide interest and fees revenue,[210] their own finances

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binding restrictions on their spending and borrowing in advance of actually using the card); RONALD J. MANN, CHARGING AHEAD 207 (2006) (advocating, among other things, "[i]nvalidating legal obstacles to credit card surcharging," "[i]nvalidating unpriceable contract terms like universal default provisions," "[s]hifting disclosure regimes to the point-of-sale," "[s]etting mandatory minimum repayment levels," and "[s]ubordinating the debt of credit card lenders in cardholder bankruptcies").

208 *See supra* note 197 and accompanying text (describing respondent's experience using credit cards as a buffer).

209 Interview with Respondent 34 (Aug. 15, 2007).

210 *See* DRAUT & SILVA, *supra* note 172, at 13 ("[Late fees are] the fastest growing source of revenue for the industry, jumping from $1.7 billion in 1996 to $7.3 billion in 2001. . . . The credit card industry's punitive practices have paid off. . . . Pretax return on assets, a key measure of profitability, averaged 4.2% in 2002, the highest level since 1988.")

often begin to fall apart and they find themselves deep in debt, without a way out.[211] Many respondents found themselves in this position when they experienced a shock event and then used credit cards to pay for many of their daily expenses for a period of time. Respondents eventually rack up such overwhelming debt, interest, and fees that their EITC can only cover some of it.

Many of the respondents in this study had short credit histories, and they were just beginning to navigate the consequences of massive debt. The stigma of welfare offices may have been in their past, but in its place were calls from collection agencies, threats, and eventually lawyers, courtrooms, and looming potential bankruptcy. One respondent talked about changing her phone number to try to avoid collectors:

> So I ended [up] changing my cell phone for them to stop calling me, because like I keep telling them, like you guys don't have to be so rude. You're calling to get your money. You don't have to be rude to me, that's gonna make [me] not want to pay you even more, so I just changed the number to refrain from arguing . . . . I said, lady, I don't have the money right now. I don't know what to tell you guys. When I get it, you'll get it. Trust me, because I want you to leave me alone . . . .[212]

The possibility of bankruptcy was on the mind of some respondents, though they often said they would simply ignore the debt and hope it did not come to that. One respondent's reasoning was typical: "I got [a credit card] but I'm not paying it yet. . . . I might owe, shoot, I might owe seven hundred on it but I'll be filing bankruptcy before I pay it."[213] Several of the respondents did not entirely understand the interest and fees on their credit cards when they used them to weather a shock event, and they were angry they now owed so much. One respondent talked about using her Queen Latifah card to get out of a bind, but then owing hundreds of dollars in interest and fees, money she did not realize she would owe:

> *Respondent*: That's that Queen Latifah chick, I wanna see her. And the three hundred dollar credit card, I only got a hundred. She took out all the fees with the other one, with that credit card. What was it, a hundred dollars, eighty-five dollars annual fee, this fee and that

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211 Admittedly, many families find themselves in this situation not just because they use credit cards for emergencies. There are psychological and practical reasons many people use credit cards for daily expenses. For further discussion of these issues, see generally Littwin, *supra* note 32, at 464–66, in which the author notes that many low-income women she interviewed obtained and used credit cards because they symbolized being a part of mainstream society.

212 Interview with Respondent 78 (Aug. 15, 2007).

213 Interview with Respondent 102 (July 29, 2007).

> fee and then they only got a hundred dollars, and now you tell me I owe you five thousand dollars. You better ask CoverGirl to give it to you, for real.
>
> *Interviewer*: What do you mean, what is this, is she in some credit card commercial?
>
> *Respondent*: No, it's a Queen Latifah credit card, that's what they tell you. Yeah, to make black people buy it, get it. And I did.
>
> . . .
>
> *Respondent*: Yeah! Yeah, she bamboozled me, yeah. That's why I say CoverGirl better pay her, mmhmm, because if I go to court I'm giving her back three hundred dollars, she ain't getting no five thousand.[214]

Credit cards are an important part of the new safety net for low-income families, who use them when shock events hit. In the short term, they work. The problem, however, is that many low-income families are not able to pay off the debt on the cards once interest and late fees accumulate. Because credit cards have only been widely available to low-income populations for the last fifteen years, we have yet to see the full consequences of this expansion. Bankruptcy rates may soar as more low-income families join those who file.[215]

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[214] Interview with Respondent 34 (Aug. 15, 2007). Queen Latifah, an actress, singer, and rapper, promoted the Urban Television Network's Freedom Card, which was issued from 2000 to 2001. *See* Freedom Card, Inc. v. JPMorgan Chase & Co., 432 F.3d 463, 466 (3d Cir. 2005). "The majority of FREEDOM CARD customers had credit lines of $300. On average, they were charged annual fees and interest amounting to 140% over and above their principal balance." *Id.* Queen Latifah also promotes CoverGirl cosmetics. *See Queen Latifah*, COVERGIRL, http://www.covergirl.com/talent/queen-latifah (last visited Oct. 24, 2012).

[215] Elizabeth Warren has shown that when indicia of class status other than income—such as education, occupation, and home ownership—are used, most bankruptcy filers as of 2001 were not the working poor, but rather people who were middle class. ELIZABETH WARREN & AMELIA TYAGI WARREN, THE TWO INCOME TRAP 7 & n.12 (2003) (citing Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115 (2003)). Consistent with these findings, many respondents in this study talked about potentially having to file for bankruptcy, but only five respondents had actually filed. However, since low-income workers are relatively new to credit cards, there may be changes in the demographics of those who file for bankruptcy as interest and late fees continue to accumulate for low-income families over time.

There is no clear explanation for why bankruptcy filers are largely middle-class Americans as opposed to poor Americans. However, there is reason to believe that as the poor rack up more credit card debt, they may be driven to file. *See* Brian K. Bucks, *Out of Balance? Financial Distress in U.S. Households*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS, *supra* note 6, at 40, 58 (comparing people who file for bankruptcy against people who do not and finding that "[t]hose in bankruptcy tend to have lower net worth and greater debt compared not only with U.S. families overall, but also with non-bankrupt, financially vulnerable families"). Bucks also found that those who file for bankruptcy have substantially higher unsecured debt than non-filers, as well as comparatively higher unsecured debt as a proportion of total outstanding debt. *Id.* at 53. If lower income families do begin to file for bankruptcy in higher numbers, we may find that they begin spending

Exacerbating the problem for these families, Congress recently made bankruptcy more expensive, and more difficult to file for, by passing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.[216] Low-income families may be left with few alternatives and few public or private safety nets available. In the short term, access to credit cards provides them with important financial relief and the ability to remain above water—but in the long term, families may find themselves drowning in debt.

D. A Fast Descent: When There Is No Credit

For some families, the lack of a public safety net means more immediate consequences. Several respondents[217] said they had sworn off credit cards due to past bad experiences with them.[218] One respondent described a bad experience with credit cards and then told us:

> I had one, I had one from J.C. Penney and I had got so behind in that and they harassed me and harassed me. I paid that sucker off and I didn't ever get another one. I never got another one . . . . I said I will never in life deal with another credit card, and I didn't.[219]

Respondents who have sworn off credit cards, like the respondent above, will not have immediate access to a credit card when a shock event occurs. Some other respondents will not have access to a credit card because they have never had one (either intentionally or because they did not qualify).[220] For families in these situations, when a shock event does not occur at tax-refund time, the resolve to maintain self-sufficiency ultimately results in a downward spiral that leads to outcomes such as homelessness.

For example, one respondent, her boyfriend, and her daughter were living in a market-rate apartment. She worked at a coffee shop

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part or all of their EITC refund on the filing and lawyer fees associated with bankruptcy. Two scholars recently found that bankruptcy filings do indeed rise steadily during the first third of the year but then remain relatively flat for the remaining part of the year. Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 Geo. L.J. 289, 319 (2010). After interviewing bankruptcy attorneys, they conclude that tax refunds largely explain this annual filing pattern. *Id*. at 319–22.

216 Pub. L. No. 109-8, 119 Stat. 23 (to be codified as amended in scattered sections of 11 U.S.C.).

217 Forty percent of respondents did not have a credit card at the time of the interview.

218 *E.g.*, Interview with Respondent 18 (July 2, 2007) ("I learned my lesson. No credit cards for me. [all laugh] Nothing! . . . We had bad credit."); Interview with Respondent 17 (July 2 & Aug. 1, 2007) ("The mistake I made was that credit card, First Union in college—SNIP. After the first semester I cut that bad boy. So I'm good.").

219 Interview with Respondent 143 (July 26, 2007).

220 For some families the problem is not lack of access to a credit card, but rather that credit cards were not enough to weather the shock events they experienced—often because rent, their highest expense, could not be charged to a credit card.

and her boyfriend was delivering pizza.[221] At that time, she said, "[W]e could afford everything like fine . . . . [W]e had money, everything was paid, we had our phone and everything, we had a table, everything was paid for."[222] However, things went downhill when the respondent broke her leg. She had only a few sick days left at her job, and she could not work at a coffee shop with a broken leg since she had to be on her feet all day. About the same time, her boyfriend's car broke down. He depended on the car to get to work and make deliveries, so they paid for it to be fixed. The respondent and her boyfriend did not have credit cards, so they had to pay for the car repair in cash.[223]

The combination of the loss of her income and the money spent on car repairs left them unable to pay their rent and their landlord served them an eviction notice. She applied for welfare (a requirement for qualifying for a shelter) and then lived in a shelter for over a year and a half before getting off the waitlist for public housing. This respondent and her boyfriend, who were working hard to make it on their own, were derailed because of a broken leg, a car repair, and a lack of readily available funds.[224]

Another respondent told a similar story, though her resistance to welfare was front and center to her financial decline. This respondent was working at a stable job when she became pregnant. She had pregnancy complications and had to stop working. She tried to make things work herself, but as she said, "I came home one day from, I had to go to court, they were taking us to eviction court and when I came home from court, they had set all our stuff outside."[225] The respondent did not have family she could live with, so she had to go to a homeless shelter. At that point she went on welfare because she was required to by the shelter and she was out of options. As she said, "I was homeless, I was pregnant, I needed money."[226] However, she described the process as "really degrading"[227] and found work soon after she gave birth. Though she still lived in transitional housing at the time of the interview, she no longer received welfare. As she said, "I got hired at [a grocery store] and I worked that and I stopped getting [welfare] because I reported it."[228]

221 Interview with Respondent 50 (July 30, 2007).

222 *Id.*

223 *Id.*

224 *Id.*

225 Interview with Respondent 118 (Oct. 24, 2007).

226 *Id.*

227 *Id.*

228 *Id.*

A third respondent tells of a similar predicament. This respondent worked for many years driving an airport shuttle before he injured his shoulder and developed severe tendinitis from lifting luggage every day. The respondent, his wife, and his five children had been living in a rented house, with his income paying the rent and all utilities. He tried to get reassigned to work that did not require lifting, but instead, "they threw [him] out of the job."[229] He found information about getting subsidized housing, but as he explained:

> The priority was, I was living in a house. . . . [T]hey tell me you have to be in shelter to get a house, subsidy houses . . . or Section 8. . . . I don't want the government. So I say no way I wanna go shelter.

The respondent resisted government help until he had no choice. Indeed, he did not seek out a shelter right after he lost his job. Instead, he kept trying to make it, until, "The landlord said OK, if you don't want to pay the rent, so I have to evict you. So he evict me and we have to go court. I had to take the court's table to the welfare things. They put us shelter."[230] He was out of options. He and his family were first put in a hotel, and then they were transferred to another shelter. As the respondent said, "But it still does not feel comfortable, because is temporary place and you couldn't do certain things, you know. Is strict rules, you know. It was all tough."[231] Perhaps the most important lesson he learned was this: "After all you pay tax and all that, if you have a kid, I make suggestion, is it's good to get better help, you know, quick help instead of waiting years for something like that. It is very tough to live shelter with the kids."[232]

In sum, for families who experience financial shocks, the EITC is sometimes just enough to smooth their financial position and keep debt collectors away. They pay off some of their debt, but interest and fees continue to accumulate on the debt they cannot pay off. In the short term, the EITC is enough. In the long term, many of these families may face bankruptcy or (in the case of homeowners) foreclosure. They are living in a dangerous cycle of debt, interest, and fee accumulation on credit cards, followed by an annual smoothing.

For other families who do not have access to credit cards, the lack of other support can have dire consequences. Many of these families have timed out of welfare, were not able to receive it quickly enough, or did not seek it out because of cultural or psychological barriers against doing so. They have no options and quickly fall into a spiral of

229 Interview with Respondent 58 (Oct. 23, 2007).

230 *Id.*

231 *Id.*

232 *Id.*

financial despair and homelessness; it may take years to begin rebuilding their financial lives.

V
Repairing the Safety Net

A. What Is the Problem?

In many regards, the EITC is an ideal federal antipoverty program. Although there are proposals and debates about whether and by how much the EITC needs to be increased and exactly who should receive it,[233] overall the EITC has bipartisan political support and is well-regarded by scholars.[234] Additionally, unlike welfare, receiving the EITC does not seem to carry stigma for its recipients.[235] Even more significantly, recipients overwhelmingly support the EITC, reporting that it provides them with motivation to work, a feeling of belonging and dignity, hope of mobility,[236] and much needed financial support to make ends meet.

It may appear that this support is enough. However, as discussed in Part IV, the data from this study show that as the EITC has replaced welfare both structurally (through significant declines in welfare rolls due to strict new rules) and culturally (due to low-income workers' reluctance to seek out welfare because it triggers feelings of shame and failure), the safety net for the poor has unraveled. The EITC is helpful for families during financially stable periods,[237] but low-income families are particularly vulnerable to financial shocks.[238]

Families cannot control the timing of shock events, so when they hit, credit cards are the most common way to cope with the increased expenses. However, while credit cards provide a short-term buffer, they lead to financial ruin for many low-income families. Because the EITC comes in one annual payment, families who have experienced a shock event have already accumulated significant debt, interest, and fees. The tax money goes toward credit card payments instead of

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233 *See supra* notes 106–10 and accompanying text (reviewing such debates and proposals).

234 *See supra* note 106 and accompanying text (listing proposed reforms to the EITC).

235 *See supra* Part III (comparing views of the EITC with views of welfare).

236 For a detailed discussion of the psychological and motivational benefits of the EITC based on this data, see Sykes et al., *supra* note 116, at 25–28.

237 *See* Timothy M. Smeeding, Katherine Ross Phillips & Michael O'Connor, *The EITC: Expectation, Knowledge, Use, and Economic and Social Mobility*, 53 Nat'l Tax J. 1187, 1193 (2000) (noting that the lump sum EITC can provide workers with the opportunity to build assets and improve economic social mobility).

238 *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 308–11 (noting that low-income workers are more likely to leave or lose jobs because of illness or family emergencies).

savings, asset accumulation, or other socioeconomic mobility goals. Other workers do not have credit cards as a temporary buffer, so unless the shock event happens to correspond with tax-refund season, they face years of financial rebuilding.

B. Existing Proposals for Change

1. The Advance EITC

One potential solution would bring back an IRS program called the advance EITC, or AEITC, which allowed qualified taxpayers to receive a portion of the credit in each paycheck during the year. The taxpayer would submit a W-5 form to her employer, and the employer would then add money to the take-home pay of the taxpayer. The Education Jobs and Medicaid Funding Act of 2010 repealed the Advance EITC.[239] After December 31, 2010, workers could no longer receive Advance EITC in their paychecks. President Obama suggested this cut as part of his February 2009 budget proposal.[240] The White House cited the low take-up rate (less than 1%) of the AEITC and said that the "budget proposes eliminating it, not because we don't support work incentives for low- and moderate-income workers, but rather because that program simply does not work well."[241]

The majority of the respondents in this study had not heard about the AEITC,[242] so perhaps enhanced promotional efforts for the AEITC would have increased participation. Some commentators, like Elaine Maag of the Tax Policy Center, argue that instead of ending the program, the IRS could take steps to educate employers and workers about the "benefits of a steadier income stream in alleviating household stresses."[243]

However, when we asked families if they would be interested in a program like the AEITC, they overwhelmingly told us that they would prefer to receive the EITC as a lump sum—as they currently

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239 Pub. L. No. 111-226 § 219, 124 Stat. 2403, 2403 (repealing 26 U.S.C. § 32(g)).

240 Press Briefing, The White House, Press Briefing by OMB Director Peter Orzag and CEA Chair Christina Romer (Feb. 26, 2009), http://www.whitehouse.gov/the_press_office/Press-Briefing-by-OMB-Director-Peter-Orszag-and-CEA-Chair-Christina-Romer.

241 *Id.*

242 Tach, *supra* note 90, at 12 ("Very few families in our sample were aware of [the AEITC] . . . . A handful of families told us that their employers had told them about this opportunity, but by and large most had not heard anything about this from their employers, their social networks, or their tax preparers.").

243 Elaine Maag, *Giving Up on the Advanced Earned Income Tax Credit*, TAX POLICY CENTER (Mar. 4, 2009, 5:24 PM), http://taxvox.taxpolicycenter.org/2009/03/04/giving-up-on-the-advanced-earned-income-tax-credit.

receive it.[244] Findings from other studies of EITC recipients have yielded similar results.[245] Respondents liked the forced-savings aspect of the EITC lump sum,[246] and they were afraid that if they took an advance on the money, they would ultimately owe the IRS money at the end of the year. This concern is not unfounded, as most respondents suffered frequent bouts of unemployment or underemployment and fluctuations in their monthly incomes for an assortment of reasons.

As Anne Alstott has explained, this raises a very difficult institutional dilemma. Fluctuations in income and the short accounting intervals of the advanced payment system could result in overpayment during the year. Families would then have to pay back the overpayment at the end of the year.[247] While the overpayments may be relatively small in absolute terms, the loss of a few hundred dollars can be a significant hardship with profound consequences for a low-income family.[248] Families from the study were also concerned that their refund might be garnished to pay other outstanding debts to the government such as child support, student loans, and back taxes, also resulting in the need for repayment to the government.[249]

For example, one respondent worked as a medical coder filing paperwork in a hospital billing office for several years until she was fired a few months before her interview. She qualified for the EITC, but was concerned that her refund would be garnished, because after she lost her job, she had fallen behind on paying her student loans. She said:

> I pray that I don't end up owing them [next year]. . . . I'm hoping to at least bring home at least a thousand. . . . But then again it's like even if I get that much, maybe student loans—they will take it away. . . . I mean I just hope and pray that I get more than that . . . .[250]

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244 Tach, *supra* note 90, at 12–13 (noting that almost all of the families in this sample would prefer to receive the EITC in a lump sum rather than in periodic payments).

245 Barr & Dokko, *supra* note 195, at 204–05 (finding that about 80% of taxpayers would like to withhold income in order to receive a larger lump sum); *see also* Damon Jones, *Information, Preferences, and Public Benefit Participation: Experimental Evidence from the Advance EITC and 401(k) Savings*, 2 AM. EC. J.: APPLIED EC. 147, 149 (2010) (finding that even with reductions in information, administrative, stigma, and procrastination costs associated with the AEITC, recipients still actively forgo it, and that long-term forced-savings motives are unlikely, and postulating that uncertainty or short-term forced-savings motives may be part of the explanation).

246 *Id.*

247 Alstott, *Limitations*, *supra* note 18, at 581–83.

248 *Id.*

249 Tach, *supra* note 90, at 14.

250 Interview with Respondent 5 (Sept. 19, 2007).

Respondents did not want to rely on their EITC refund, so receiving it early and potentially owing the government money was not a risk they were willing to take. In fact, their fear was so significant that they would rather rack up large interest and fees on credit cards than receive overpayment from the AEITC.

The most common reason for preferring the lump sum, however, was that families were committed to using the EITC as a forced-savings tool.[251] In fact, many respondents strategically claimed zero dependents on their tax forms to increase the size of their EITC refunds. When these workers filled out their W-4 forms, they had the opportunity to claim allowances for their dependents, spouses, and themselves, which would reduce the amount withheld for taxes and increase the size of their paychecks. However, employees have the option to "claim zero." By not claiming those personal allowances or dependents on their W-4 forms, they have more money withheld from each paycheck than necessary. This strategy increases the size of their tax refund at the end of the year. By claiming fewer children than they actually have, the workers pay more through the year than the taxes they owe.

One respondent explained that she claimed zero deductions because her tax refund is "like a savings account. I will have that money back for sure."[252] This strategy did not come without sacrifice, though, since some respondents experienced financial hardship and went into debt while they were waiting for the refund to come. They also did not receive any interest on these withholdings, which they might have received from a different savings vehicle such as a bank savings account.

Finally, many respondents also acknowledged that they probably would not save if a small amount of extra money came in their paychecks, so they preferred the lump sum. One respondent said, "[E]ven if . . . I get my extra one hundred in [each] paycheck I won't save that one hundred dollars. I won't save it. . . . I know at the end of [the year] I will have that big five thousand . . . ."[253] She explained, "[I]f you file zero then more money they take out of you, and then more money you get back at the end of the year. So that's why now I've been fil[ing] zero."[254]

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[251] Barr and Dokko's study yielded a similar finding. Barr & Dokko, *supra* note 195, at 204–05 (noting that approximately 80% of taxpayers "would like to use the withholding system to save"); *see also* Barr, *supra* note 160, at 206 (noting that overwithholding is a common phenomenon among low-income households).

[252] Interview with Respondent 89 (Sept. 1, 2007).

[253] Interview with Respondent 95 (Aug. 28, 2007).

[254] *Id.*

As Laura Tach noted, the fact that the respondents were willing to forgo a payment in the present—essentially providing the government with the equivalent of a "no-interest loan" until tax time—shows just how motivated they are to save, even if that means they must pay the government to save for them.[255]

Other analyses of these data find that EITC recipients do save some of their refund in the long run, and planned to save even more of it when they filed taxes. Respondents were surveyed about their planned EITC allocations and 57% indicated they planned to save at least part of their EITC.[256] However, only 19.6% of respondents actually saved (an average of 6% of their EITC refunds).[257] Steve Holt of the Brookings Institution suggests a modified version of the AEITC to better reconcile the desires of recipients with the reality of their financial positions.[258] He argues for a program in which EITC recipients would receive their EITC in periodic quarterly payments based on predicted EITC eligibility from the IRS (instead of their employers, like the AEITC).[259] Holt believes that this option would take into account the desire for forced savings by low-income families, but would also help households with everyday needs and reinforce the earned quality of the EITC.[260] While Holt's proposal might offer some advantages over the AEITC, it is still plagued with some of the same problems of both the AEITC and the EITC in its current form: the strong recipient preference for a big lump-sum payment, the potential for overpayment and the resulting tax burden,[261] and the lack of immediate support in cases of financial shock.

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255 Tach, *supra* note 90, at 15.

256 Mendenhall et al., *supra* note 25, at 388 tbl.6.

257 *Id*. However, another EITC study found that about 50% of low- and moderate-income individuals who received a tax refund saved all (9%) or part (42%) of their tax refunds. Barr & Dokko, *supra* note 195, at 204.

258 Steve Holt, *Beyond the Lump Sum: Periodic Payment of the Earned Income Tax Credit*, Community Investments, Spring 2009, at 26, 29–31, *available at* http://www.frbsf.org/publications/community/investments/0905/Spring_2009.pdf.

259 *Id.*

260 *Id.* at 30.

261 Holt proposes addressing the repayment problem in two ways. First, he suggests a maximum advance disbursement of 50% of the total anticipated credit. Second, he suggests a potential "safe-harbor" for overpayment, arguing that if a taxpayer can demonstrate that she is acting in good faith, the government should waive any repayment liability. *Id.* at 29. This type of program would eliminate the repayment problem for EITC recipients, but it presents other challenges such as bureaucratic coordination within the IRS, susceptibility to fraud, and difficult-to-muster political support.

2. *Increasing the EITC Subsidy*

The data show that many families who receive the EITC are living on the brink of financial disaster. In the majority of cases, their incomes did not cover their expenses.[262] Some scholars have argued that increasing the amount of the EITC would make families more financially stable and presumably better equipped to weather financial shocks.[263] Proposals on how exactly to adjust the EITC vary, but the basic idea of the proposals is the same: Most recipients would be given more money and thus a greater ability to save for rainy days.

This type of proposal, on its face, seems appealing because it is straightforward and there are few, if any, issues of paternalism. Families do not have enough money—so, if it is politically and economically feasible, we should provide them with more money. Most families in this study were struggling and sometimes went without food and other basic necessities. Increasing their EITC subsidy may be part of the solution to ensure that these families have enough to make ends meet.

While an increase in the EITC may help solve some problems for families, they are unlikely to solve the problem of financial shocks. In theory, receiving more money might mean the families could save more money for a rainy day. In practice, however, many families who planned to save their refunds ultimately ended up using much of the money to pay off debt. Indeed, 72% of the respondents had plans (at the time they filed their taxes) to use some of their refund to catch up on debt, and in reality 89% (an additional 17%) did so.[264] Most of the respondents felt so pressed to meet financial obligations that while the idea of putting aside a significant portion of their refund was appealing, the expenses of everyday life and their accumulating debt made saving seem unwise.[265]

Not only do respondents use the EITC to pay down accumulated debt, but many of them also spend it on current consumption (including shopping, groceries, things for their children, car purchase or repair, vacation, and other expenses). Almost 92% of respondents in this sample spent an average of about 50% of their EITC on some type of current consumption.[266] Families at very low income levels

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262 *See* Sykes et al., *supra* note 116, at 16 (describing the financial situations of families receiving EITC).

263 *See supra* note 106 (discussing proposals to change the EITC subsidy).

264 Mendenhall et al., *supra* note 25.

265 This is not to say that respondents did not save any of their refund. As noted in Part V.B.1 above, 20% of the sample saved, on average, 6% of their total refund. Mendenhall et al., *supra* note 25, at 45, tbl.6.

266 *Id.*

face many unmet family needs, including clothing that fits, cars that run, and furniture that is not falling apart. Respondents looked forward to the EITC as a way to feel, at least for a few months, that they were not lacking.[267]

Furthermore, behavioral economic research has found that it is difficult to resist spending money—even without unmet material needs—when it is easily available to spend.[268] Research has also found that saving works best when it is automatic.[269] These spending habits, combined with accumulating debts and unmet basic needs facing most respondents as tax season approaches, suggest that simply giving respondents a larger EITC would be unlikely to make a significant difference in how they respond to shock events. I believe the financial trajectories of low-income families would be better served if the government directed money into accounts designed specifically to help families cope with financial shocks, as discussed in Part VI below.

3. *Solutions Outside of the EITC*

a. Expansion and Creation of Targeted Programs

There are numerous proposals unrelated to the EITC that may help families when they experience specific types of shock events. For example, scholars have proposed different variations of paid family leave,[270] an expansion of unemployment insurance,[271] and an expansion of disability benefits for temporary disability leave.[272] I have two

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[267] For a detailed discussion and supporting qualitative data on this effect, see Tach, *supra* note 90, at 40–41.

[268] *See* Sendhil Mullainathan & Eldar Shafir, *Savings Policy and Decisionmaking in Low-Income Households*, *in* INSUFFICIENT FUNDS 121, 135 (Rebecca M. Blank & Michael S. Barr eds., 2009) ("Keeping money in cash rather than in a bank increases the ability and temptation to spend immediately, making it difficult to achieve any asset accumulation."); *cf.* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE 47–49 (2008) (discussing methods to curb the proclivity to spend money that is readily available).

[269] Mullainathan & Shafir, *supra* note 268, at 124 ("[N]umerous studies of middle-class savings show that, as a consequence of faulty planning and procrastination, saving works best as a default.").

[270] *See, e.g.*, Jeremy I. Bohrer, *You, Me, and Consequences of Family: How Federal Employment Law Prevents the Shattering of the "Glass Ceiling*,*"* 50 WASH. U. J. URB. & CONTEMP. L. 401, 418–21 (1996) (proposing a limited, paid family leave); Samuel Issacharoff & Elyse Rosenblum, *Women and the Workplace: Accommodating the Demands of Pregnancy*, 94 COLUM. L. REV. 2154, 2214–20 (1994) (proposing an insurance model for pregnancy leave); Gillian Lester, *A Defense of Paid Family Leave*, 28 HARV. J.L. & GENDER 1, 1–2 (2005) (evaluating and defending paid family leave); Erin P. Drew, Comment, *The Birth and Adoption Unemployment Compensation Experiment: Did the Department of Labor Go Too Far?*, 106 DICK. L. REV. 367, 387–88 (2001) (arguing that Congress should either amend the Federal Unemployment Tax Act to provide for family leave, or expand the Family and Medical Leave Act).

[271] *See, e.g.*, GRAETZ & MASHAW, *supra* note 27, at 202–03.

[272] *See, e.g.*, *id.* at 219–26 (proposing a plan for short term disability insurance).

main concerns with these proposals. First, these programs would presumably require a waiting period to determine eligibility. As discussed in Part IV.A, when respondents experience shock events, they often need money right away. Waiting periods for unemployment insurance and similar programs can drive respondents to simply use credit cards when they need funds immediately. Additionally, as many of the respondents in this study discussed, the eligibility requirements can be confusing and difficult to meet.

The other, related concern about the aforementioned programs is that they only target specific types of shock events. Even if they are relatively inclusive, these programs do not typically cover all financial emergencies. For instance, this study found that for low-income families, even one seemingly small shock event—such as a car repair—can derail a family just as much as an unexpected job loss, because the smaller shock event can lead to job loss.[273] Being able to ease the financial shock before it leads to something more serious is much more useful for families and ultimately saves the government money.

In many cases, targeted proposals serve important purposes but would not tackle a wide variety of smaller-scale shock events. For example, Anne Alstott's proposal for Life-Planning Insurance would benefit some of the respondents in this study.[274] Her program proposes to provide income support and social services to parents whose children "require intensive, personal care due to a serious illness or disability."[275] These challenges would otherwise drain the families' resources for quite some time. In such cases, a plan to tackle smaller shock events is unlikely to be enough, and a program like Alstott's is needed. However, Alstott's plan is not well suited for tackling the smaller shock events with big consequences that many respondents in this sample experienced. There is a need for both types of programs—they just serve different purposes.

Michael Graetz and Jerry Mashaw have also proposed several plans to provide better security for low-income Americans.[276] Their complex proposals cover a wide breadth of areas, including but not limited to: programs for improving health care,[277] unemployment

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[273] *See, e.g.*, *supra* notes 221–24 and accompanying text (explaining how a health emergency led to larger financial shocks for one respondent).

[274] For example, one respondent struggled when her son's leukemia diagnosis required an extended stay in the hospital. Interview with Respondent 70 (Aug. 16, 2007). Alsott's program would have provided this respondent with relief from the burden of balancing work and her son's care.

[275] ANNE L. ALSTOTT, NO EXIT 119 (2004).

[276] GRAETZ & MASHAW, *supra* note 27, at 153.

[277] *Id.* at 163–87.

insurance,[278] disability insurance,[279] childcare,[280] housing,[281] and long-term care insurance,[282] among others. Many of their proposals would benefit the overall financial situation of low-income EITC recipients. However, they do not address the small financial shocks that can have big consequences. People who lose their jobs need a better support system than the one that exists, and Graetz and Mashaw make headway in proposing an improved system. However, for many EITC respondents in the sample, restructuring the unemployment insurance program will not prevent unemployment resulting from financial emergencies. Graetz and Mashaw's programs would not pay for the needed car repair, for example, that would continue to provide a low-income worker transportation to work, and in turn allow the worker to keep her job. The Graetz and Mashaw proposals do not address the likelihood of small, devastating financial crises.

b. Hacker's Universal Insurance

Jacob Hacker proposed a program he terms "Universal Insurance"[283] in response to the increasing economic insecurity many Americans face.[284] His program avoids narrowly targeting specific shock events. Hacker argues that "families should have access to more than the highly segmented programs that now characterize American social protection—programs that not only leave glaring gaps but also lack the ability to respond flexibly to a rapidly changing world of risk."[285] However, Hacker's program also targets those experiencing "the most severe economic shocks."[286] To qualify, the deductible is 20% of income—so Universal Insurance provides benefits only if a family's income fell by more than 20% of what it was the year before.[287] Additionally, this 20% must be *after* benefits from other public programs are taken into account.[288] While the program would

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278 *Id.* at 188–209.

279 *Id.* at 210–26.

280 *Id.* at 227–54.

281 *Id.* at 245–50.

282 *Id.* at 273–77.

283 JACOB S. HACKER, THE HAMILTON PROJECT, UNIVERSAL INSURANCE: ENHANCING ECONOMIC SECURITY TO PROMOTE OPPORTUNITY 8 (2006) [hereinafter HACKER, UNIVERSAL INSURANCE], *available at* http://www.hamiltonproject.org/files/downloads_and_links/Universal_Insurance_Enhancing_Economic_Security_to_Promote_Opportunity.pdf. Universal Insurance would require a premium, a coinsurance rate that varies with family income, and a deductible. *Id*.

284 HACKER ET AL., ECONOMIC SECURITY AT RISK, *supra* note 1, at 2.

285 *Id.* at 190.

286 HACKER, UNIVERSAL INSURANCE, *supra* note 283, at 14.

287 *Id.*

288 *Id.* at 4.

help in the most severe of cases, it would be difficult for many respondents in this study to qualify for most of the shock events they experience. Hacker's program suffers from some of the problems of the more targeted programs. It would not cover many of the seemingly small shock events a family may experience: the bank overdraft fee, the car repair, or the dental work—small problems that can snowball into financial ruin. Respondents need something other than credit cards to help them cover expenses from these relatively smaller financial shocks.

A fundamental problem with Hacker's program is that it is tied only to income decline, not unexpected expenses. Data from this study shows that for many respondents, the loss of income comes later in the cycle, after an initial unexpected expense hits. Families need a way to smooth the initial financial shock before it leads to consequences like job loss and the later loss of income that Hacker targets.

c. TANF Office Emergency Funds

Some state TANF programs provide emergency funds to families to help keep them off welfare. For example, North Carolina's program Work First is focused on "self-sufficiency"[289] and allows families only two years to move through Work First.[290] One of the strategies Work First uses to keep families off welfare is "diversion," under which "qualifying families can get a one-time payment equivalent to up to three months [sic] worth of cash Work First benefits, based on a needs assessment by the county worker, Medicaid, child care and Food and Nutrition Services, if eligible, and other supportive services."[291] This program allows families to stay off welfare but still access emergency money when needed. A nationwide program of emergency money through welfare offices could be considered, but the program would be unlikely to stop the cycle of emergency credit card use and interest and fee build-up among low-income families.

One problem with Work First is that to determine eligibility and need for funds, an assessment is conducted by a county worker. If the waiting period is too long for this determination, the payment might come too late to help families when they need money quickly. Even if the eligibility determination period is relatively short, the larger problem is that these programs are run through welfare offices. As we saw in Part III, EITC recipients do whatever they can to avoid the

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289 N.C. Gen. Stat. Ann. § 108A-27 (West 2012).

290 *Id.* § 108A-27-1(a).

291 *Work First*, N.C. Div. Soc. Servs., http://www.ncdhhs.gov/dss/workfirst/ (last updated Dec. 6, 2012).

stigma of welfare offices. Though these emergency programs are not specifically welfare, they still involve going to the welfare benefits office and being scrutinized in the way many recipients want to avoid at all costs. Many EITC recipients with access to credit cards—which are quicker, easier, and not stigmatized—may choose to use them rather than seek out these welfare-like emergency programs. It is telling that only 7% of this sample turned to welfare to cope with a shock event. While "timing out" of welfare may partially explain this low percentage, as discussed in Part II.C, the strong cultural disapproval of welfare and the resulting desire to stay away from anything associated with it may lead many recipients to other means of coping.

VI
Design Framework for Proposed Savings and Emergency Fund (SAEF) Accounts

A. The Proposal

My proposal is straightforward, and not totally unlike programs that some EITC recipients already enroll in through their workplaces. However, it could profoundly change the financial trajectory of low-income families, particularly when they experience financial shocks. The proposal has several key features, outlined in the following five subparts.

1. Twenty Percent Withheld in SAEF Accounts, with Interest

The first part of my proposal is that the IRS automatically withhold 20% of every recipient's EITC amount. Since the average EITC refund is about $2770 for a family with children,[292] and many families receive the Child Tax Credit[293] (and in many cases a state EITC on top of that), the 20% figure still leaves a sizable amount of the refund for receipt in a lump sum to be used however the family sees fit.[294] The amount withheld would accumulate interest from the IRS at a

[292] This was the average refund in 2009 for people with children. Ctr. on Budget & Policy Priorities, *supra* note 149.

[293] *See* 26 U.S.C. § 24(a)–(b) (2006) (allowing a $1000 tax credit per child, which is only reduced for individuals earnings more than $75,000 and couples earning over $110,000); § 24(d)(1) (allowing for a partial refund).

[294] Like many aspects of this proposal, this percentage is subject to adjustment. The best method of implementing this proposal would be to conduct randomized trials with different groups of EITC recipients, varying many aspects (such as amount withheld, enrollment methods, and bonus structure, among others). Too often changes to benefit programs are implemented without proper trials to find optimal structures—I believe that such trials are vital, no matter how much previous data the program changes are based on. Change can have unintended consequences, and small-scale trials are an important way to identify and make changes to avoid negative consequences.

fixed rate set during program implementation and would provide a substantial amount of money to serve as a temporary smoother during a financial crisis. Recipients would receive a written letter at the time their tax refund is processed that would explain that their money is being stored in a Savings and Emergency Fund (SAEF) account and that by leaving money in the account, they are accumulating interest. They would be told specifically that the money is for emergencies, as the name of the account indicates, and money from each year would roll over and continue to accumulate interest. Additionally, recipients would receive quarterly statements indicating the amount of money in their account and the interest earned.

A key feature of my proposed SAEF accounts is the interest recipients would receive. This is important both as a public welfare tool to help low-income families accumulate savings for an emergency fund, and also as a tool to provide an incentive for families to allow even more of their refund to be withheld for this purpose. The more money in the account and the more time it remains deposited, the more interest earned. Written material sent to SAEF account holders would clearly explain how interest works and provide concrete examples of how interest can increase savings.

2. *Option to Increase Amount Withheld, with Government Matching Funds*

EITC recipients would be given the option to increase the percentage of their refund allocated to their SAEF accounts, up to a maximum of 40% of their refund. This increased allocation option would show up directly on the EITC tax schedule. To encourage increased allocation, the government would match the amount contributed at a 50% match rate. The matching funds would only be activated if the amount above the initial 20% remained in the account at the end of a twelve-month accounting period to discourage abuse of the program.[295] For example, consider a hypothetical EITC recipient, Violet, with an EITC refund of $2000. If she decided to increase her contribution amount to 30%, the default 20% (in her case $400) would be deposited into the account, in addition to another 10% (in her case $200). If her SAEF account still had $200 or more in it (the amount she contributed above the default 20%) at the time of her next tax

[295] The concern about abuse is that a recipient could contribute an additional percentage above the initial 20% to receive the government matching funds, but then immediately withdraw the money, having only contributed the additional percentage to access the matching funds and use it immediately for nonemergency purposes. Under my proposal, a recipient could still withdraw the money after the initial twelve months, once the matching kicks in, but since more time has passed this scenario is less likely.

filing (roughly one year later), Violet would receive $100 from the government into her account at that one-year mark. The $100 is the match to the 10% she deposited above the default 20%.

Research suggests that offering such matching incentives would be effective in encouraging increased allocations to the fund. One study offered roughly 14,000 H&R Block clients in low- and moderate-income neighborhoods matching incentives for IRA contributions at the time of tax preparation.[296] They found that higher match rates significantly raised IRA participation and contributions. Take-up rates were 3% for the control group, 8% in the 20% match group, and 14% in the 50% match group.[297] Further, average IRA contributions for the 20% and 50% match groups were four to seven times higher than those in the control group.[298]

3. *Automatic Enrollment Structure*

EITC recipients would be automatically enrolled in the SAEF program. As discussed in Part VI.A.2, recipients would have the option to increase the amount withheld up to 40%, but all recipients would default into the 20% accounts. This aspect of the program is based on social science research that suggests that even if SAEF accounts are beneficial for recipients, without automatic enrollment, take-up rates will likely be lower than desired.[299] Research about human behavior and finances finds that people often default to the status quo.[300] As Tufano and Schneider note, studies show that

[296] Esther Duflo et al., *Saving Incentives for Low- and Middle-Income Families: Evidence from a Field Experiment with H&R Block*, 121 Q.J. ECON. 1311, 1311, 1313 (2006). Duflo et al. argue that their findings suggest that clear and understandable programs for matching of savings and professional assistance could generate a significant increase in contributions to retirement accounts, including among low- and moderate-income households. *Id.* at 1313–14. Retirement savings are certainly important, but for many families receiving the EITC, the immediate need for money to simply retain their housing and have food available takes precedence. This is even more prevalent when these families are experiencing a financial shock. Thus, I argue that a more flexible savings account should be encouraged as a first savings tool. Families on the higher end of the EITC earnings spectrum may ultimately use their accumulated SAEF account money for retirement, but the money would be readily available without penalty if the family suffers a shock event.

[297] *Id.* at 1313.

[298] *Id.* at 1313–14.

[299] *See id.* at 1314 (describing an experimental program in which "[t]ake-up rates were not only far below 100%, they never exceeded 20%, even among tax filers in the 50% match group who had substantial refunds"). This concern is particularly important because this program is new. The combination of an unknown program and the proclivity to default to the status quo could mean great difficultly with enrollment unless the program were specifically opt-out.

[300] THALER & SUNSTEIN, *supra* note 268, at 7–8 ("For a host of reasons . . . people have a strong tendency to go along with the status quo or default option."); *see also id.* at 12–13,

"[i]nertia makes us 'go with the flow,' continuing on the same course or avoiding decisions, especially when faced with complex or unpleasant choices. In savings processes where the inertial or default behavior is 'savings,' saving increases."[301] Indeed, many companies are changing their retirement plans to opt-out plans based on such research.[302] Studies of retirement accounts have found profound enrollment differences in opt-out versus opt-in programs.[303] One study of retirement plans at three companies that adopted automatic enrollment plans found that enrollment rates rose to 90%, versus previous rates of 20%–40% at six months' tenure or 60% at thirty-six months' tenure.[304] Without automatic enrollment, even with the incentives that the SAEF program offers, the take-up rate for SAEF may be very low.

4. *Access to Funds Using SAEF Cards*

Unlike retirement accounts and other common withholding programs, recipients would have almost immediate access to their SAEF account money when needed, without penalty. They would all receive a SAEF card, which would function much like a debit card but would be presented to them as an "emergency" card. Unlike other social welfare insurance programs, however, when a shock event hits, there would be no requirement to "qualify" for use—having received the EITC is the qualification.

In order to curb impulsive spending, recipients would have to call a toll-free number (listed on the card) to activate it, and there would be a twenty-four-hour waiting period for activation.[305] The twenty-four-hour waiting period is relatively short, allowing the funds to truly be available for emergencies—unlike many other social welfare programs such as unemployment insurance, under which initial benefits can take months to arrive. The activation would stay valid for two weeks and then deactivate. After deactivation, a new activation

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35, 83 (discussing status quo bias); Mullainathan & Shafir, *supra* note 268, at 124 (noting a "general reluctance to depart from the status quo, because the disadvantages of departing from it tend to loom larger than the advantages of the alternatives").

[301] Peter Tufano & Daniel Schneider, *Using Financial Innovation to Support Savers: From Coercion to Excitement*, *in* INSUFFICIENT FUNDS, *supra* note 268, at 157.

[302] *Id.* at 157.

[303] *Id.* at 157–58.

[304] *Id.* at 158.

[305] As Lee Anne Fennell discusses in her article, *Willpower and Legal Policy*, waiting or cooling off periods are common policy tools because people often make different decisions in the present than they would when informed both by their "present self" and "longer-run self." Lee Anne Fennell, *Willpower and Legal Policy*, 5 ANN. REV. L. & SOC. SCI. 91, 97–98 (2009). Waiting periods, Fennell notes, can "reduce impediments to intrapersonal bargaining." *Id.* at 98.

call with the mandatory waiting period would be necessary. It is important to note that the activation would not require a justification, it would simply require an extra step before use of the card and a short waiting period.

This easy access would discourage credit card use because SAEF cards would have many of the same functions as credit cards—they provide fast access to funds and are stigma-free. The card could be used at any store (only when a PIN code is entered) and cash could also be withdrawn through an ATM. It would not be possible to overdraw while using the card because the request would simply be rejected if a user attempted to withdraw (or use the card to spend) more than the SAEF account contained.

The qualitative data from this project shows us that respondents are motivated to avoid government programs such as welfare, even when doing so is not rational.[306] Credit cards are the default source of help because of their ease of use and their many functions. Indeed, the data from this study demonstrates that the financial shocks experienced by EITC recipients—as well as their needs after those shocks—are diverse. For some recipients the most pressing need is covering daily expenses during a time of unexpected loss of income; for others it is covering the cost of the shock event. In contrast to existing targeted programs (such as unemployment insurance), SAEF cards are designed to be as flexible as possible to help quickly smooth the costs of the shock event, so that it does not lead to financial hardship. The ability to use SAEF cards to withdraw cash may appear overly generous, but it is a direct response to a problem many respondents raised: Rent cannot be paid with a credit or debit card. When respondents experienced a shock event, they could let bills for certain nonessential utilities such as internet, cable television, or telephone go unpaid. The worst-case scenario was the service being turned off. But just a few months of unpaid rent could result in eviction proceedings and complete financial upheaval. Moving to a homeless shelter could mean losing a job if transportation from the shelter was difficult or the job required working a nightshift—which many shelters do not allow. Rent is thus one of the most essential, yet often one of the most difficult, expenses to cover when a shock event occurs. The ability to withdraw SAEF funds in the form of cash is designed as an easy way for recipients to get help covering rent in cases of emergency.

[306] *See supra* notes 221–32 and accompanying text (discussing respondents' stories).

5. *Annual Bonus Structure to Discourage Nonemergency Use*

To provide an additional incentive to keep money in SAEF accounts, the SAEF program would pay out annual bonuses to recipients based on the percentage of the money that remained in the account at the time of the next year's tax filing. The amount used for purposes of calculating the percentage remaining in the account would include money that rolled over from past years. Once someone has a SAEF account, they are eligible for the bonus each year that there is still money in their account, even if they become ineligible for the EITC. Not including interest, my proposed bonus structure is shown in Table 1, below.

TABLE 1

PERCENT OF BALANCE RETAINED	BONUS
100%	$200
75%–99%	$150
50%–74%	$100
25%–49%	$50
5%–24%	$30

A few hypothetical examples illustrate how the bonus program would operate. Consider a fictional mother. When she is filing fiscal year 2017 taxes in February 2018, she has $400 in her SAEF account. The amount deposited into her SAEF account from fiscal year 2017 taxes is $200, increasing the total amount to $600. For the purposes of the annual bonus the next year, then, $600 is the starting amount. Whatever percentage she has left of that $600 when she files for taxes in 2019 will be used to calculate her bonus.

Another fictional recipient has $290 in her SAEF account from her fiscal year 2016 taxes, filed in February 2017. She does not receive the EITC for fiscal year 2017, but still receives a $200 bonus when she files her taxes in 2018 because she did not withdraw any of the money. She also earned $10 in interest the previous year, so after the $200 bonus, her account balance is now at $500. In 2019, she again does not qualify for the EITC, but she has $250 (or 50%) remaining in her SAEF account. She will receive a bonus based on the ratio of the $250 to her original $500. Thus, she will receive a bonus of $100.

To increase the political feasibility of the program, the bonus dollar amounts would be set at the smallest dollar amounts for each category thought to actually provide a real incentive that might change spending behavior. Further research and pilot trials on the exact amounts to provide such an incentive may be necessary.

B. Why SAEF Accounts?

By listening to EITC recipients, I learned how the EITC actually functions in their lives and what they believe works and does not. What I found is that the EITC has largely replaced welfare as the public form of support, but that because it often cannot provide immediate help for shock events, many recipients turn to credit cards, which provide temporary relief but long-term trouble. I sought to suggest improvements based on these findings. SAEF accounts are an answer to this problem. The program keeps the aspects of the EITC that recipients find beneficial, but also attempts to make the program more responsive to shock events.

Families who experience a financial shock would have stigma-free savings from which to draw—and it would be their own money, free of interest and finance charges. The goal of the SAEF card program would be to make it as similar to a credit card as possible, without the interest and fees. It would be stigma free because it would have the appearance of a typical debit card, it would allow families to receive money quickly if needed (unlike other government safety net programs such as unemployment insurance and disability), and it would be readily available.[307] As discussed in Part IV.B, many families talked about keeping credit cards for emergencies only. This fund could largely replace those cards, or at a minimum reduce the need for them. This proposal would help families in the long term avoid unmanageable debts and even bankruptcy. In addition, it would allow more of the EITC in the short term to be saved or go toward mobility goals instead of paying down interest and fees from debts that were incurred when shock events happened throughout the year before tax time. The amount withheld for most families would be relatively small, but if families were able to use the $300 from their SAEF account to pay for an emergency dental procedure rather than put this repair on a credit card, the accumulated interest and fees they could avoid would be significant. Then, come tax time, more of their EITC could be used toward savings, mobility goals, or immediate needs. The benefits for families could be tremendous.

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[307] Some may argue that the money would be too readily available and an incentive beyond interest should be established to encourage recipients to only withdraw the money in an emergency. A small withdrawal fee or additional interest incentives (increased interest rates the longer the money is left in the account) may be advisable. During the first few years of the program, slightly different structures such as these could be field tested over a two- to five-year period to determine the best program structure.

For families who do not have credit cards—or who experience a shock event for which a credit card cannot help—the fund could have even greater consequences. For the family that was reliant on a car to get to work and needed a car repair but did not have access to a credit card, the fund could mean the ability to maintain employment, thus avoiding the potential for financial disaster and years of rebuilding.

In some cases, families may not need to access the money to help smooth finances after a shock event, or they may only need to access some of the money. In such cases, the SAEF account would serve as an interest-bearing vehicle through which to save. Both respondents' own accounts of their desire for forced savings due to the inclination to spend money when it is given to them,[308] and an abundance of research showing that people are indeed inclined to spend money when it is readily available,[309] suggest that a forced-savings program such as this one would be useful. People generally appreciate and utilize forced-savings programs.[310] Ultimately, over time and over several years of EITC refunds, SAEF money could grow into a substantial fund to be used for mobility purposes or for retirement if it is not needed sooner to deal with shock events. It could serve as a down payment on a house, a car, or even as a college fund for children.

The SAEF program would be intentionally run through the EITC not just because the EITC is popular with recipients, but also because it has strong bipartisan support.[311] From a political feasability standpoint, working within the EITC framework has many benefits. It is an outlier from most public social welfare programs in the strong support it receives.[312] Congress approved many increases to the program at a time when funding to other social welfare programs was cut or remained stagnant.[313] Thus, because the SAEF program adheres to the basic tenets of the EITC, it is more likely to be politically feasible than programs that resemble entitlement programs such as the pre-1996 welfare program.

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308 *See supra* notes 244–46 and accompanying text (discussing respondents' preference for forced savings).

309 *See* THALER & SUNSTEIN, *supra* note 268, at 40–52 (emphasizing the difficulties in limiting the expenditure of available funds).

310 *Id*. at 48 (discussing anecdotal examples of successful forced-savings programs).

311 *See supra* note 29 and accompanying text.

312 Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 19, at 288.

313 *See id*. at 285, 286 figs.1 & 2 (noting and illustrating the growth of the EITC at a time when other social welfare programs remained stagnant or shrank).

C. Response to Potential Counterarguments and Alternative SAEF Designs

1. Loss of Liberty and Paternalism Given Automatic Enrollment Structure

Some may argue that the SAEF program is paternalistic and deprives low-income EITC recipients of money that is rightfully their own, particularly given the automatic enrollment structure. The simplest reply to this concern is that recipients can withdraw SAEF money with no penalty. But why make families go through this extra step? Why not simply design the program with an opt-in (or even an opt-out) structure? The automatic enrollment approach explicitly takes into account the belief that SAEF accounts are an important tool for low-income families. Research suggests that people often default to the status quo.[314] If respondents were given the choice either to go with what has been the default for many years (no SAEF account) or to specifically enroll in the program, the take-up rates likely would be very low. While there is mild paternalism associated with such automatic enrollment programs, the idea is that the program nudges people in the direction of making their lives better, while still allowing them the choice to reject the nudge by withdrawing their money. In their book *Nudge*, Professors Richard Thaler and Cass Sunstein discuss in great detail the idea of nudging people of all income levels in the direction of wise economic choices while still allowing them the option to reject these choices.[315] One of the important justifications for such nudges is the wealth of research that shows that people often make fairly bad economic decisions and that they may make different decisions "if they [pay] full attention and possess[ ] complete information, unlimited cognitive abilities, and complete self-control."[316] The SAEF program is designed with this research in mind.

2. Families Cannot Afford the Twenty Percent Withheld

A related, more troubling concern is that families' budgets may not allow for this type of withholding. Particularly in the first year of implementation, before they have had a chance to save up a "rainy-day fund" from past years, families may be stretched since the EITC is a significant part of many families' budgets.[317] Results from another

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[314] *See supra* note 300 and accompanying text.

[315] *See generally* THALER & SUNSTEIN, *supra* note 268.

[316] *Id.* at 5.

[317] *See* Mendenhall et al., *supra* note 25, at 4 (discussing the significant role of the EITC in the budget of low-income families).

analysis of this data, however, provide hope that many families would be able to keep money in their SAEF accounts. Almost half of the sample (47%) allocated 19% of their refund toward "asset building," which was defined as initial savings, education, and home ownership or improvement expenses.[318]

However, this critique is important, and it points to an ongoing conversation about the need to increase EITC subsidies. While almost half of recipients put some money toward asset building, the other half did not, and almost all recipients put at least some of their refund (an average of 50%) toward current consumption.[319] There have been several proposals to increase the amount of the EITC for low-income families, with variations such as whether the maximum amount of the credit should be tied to the official poverty guidelines, whether there should be a limit on the number of credit-generating children for each household, and how rapidly the credit should be phased in and out.[320] It is beyond the scope of this Article and this study's data to comment specifically on the degree of increase (if any) that families should receive. However, responding to calls for an increase in the amount of the EITC[321] while implementing the SAEF account option would ease the transition for families, increase the amount allocated to SAEF accounts, and make it more likely that families would leave money in their SAEF accounts to grow.

An alternative way to alleviate this concern would be for the government to fully or partially fund SAEF accounts. The proposal for the SAEF program is intentionally relatively low-cost since my aim is bipartisan appeal and implementation. More money from the government, however, would mean an even stronger safety net for families and less concern that recipients will lack basic needs due to the withholding of EITC money for SAEF accounts. An alternative plan would be to modify the SAEF program for just the first year. Under this plan, the government would fund the 20% for SAEF accounts up until, at most, the second year of the program. This would give recipients an initial buffer to help recover from the cycle of interest and debt accumulation.

3. *Recipients Will Withdraw the Money for Everyday Use*

Some commentators may be concerned that time, money, and effort will be put toward the design of the SAEF program, and then

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[318] *Id.* at 43 tbl.3.

[319] *Id.* at 22, 28, 43.

[320] *See supra* note 30 and accompanying text (describing current proposals for EITC reform).

[321] *See supra* Part V.B.2. (discussing proposals to increase the EITC subsidy).

the vast majority of recipients will simply withdraw the money right away and use it for everyday expenses, treats, or to pay off existing debt. Essentially, these commentators would be concerned that recipients will treat the money in their SAEF account like part of their refund—going to an ATM and withdrawing the money quickly, rather than saving it to cover future shock events.

There are several factors that lead me to predict otherwise. First, respondents in this study said again and again that they like forced-savings programs. Many of them enrolled in workplace Christmas savings accounts and similar programs, if available. Additionally, one of the reasons the EITC is so popular with respondents is precisely because they view it as forced savings and, as discussed in Part V.B.1, respondents much prefer the lump sum to an option like the AEITC, which would give them money each month.

Second, behavioral economic research also supports the proposition that recipients will use the money for its intended purpose. Research finds that people engage in what is called "mental accounting."[322] That is, "people appear to compartmentalize wealth and spending into distinct budget categories, such as savings, rent, and entertainment, and into separate mental accounts, such as current income, assets, and future income."[323] People tend to adhere to these separate "accounts." Thus, since SAEF accounts would be clearly labeled as emergency accounts, people would be more likely to adhere to this category of spending. Researchers have even suggested—based on mental accounting research—that bank accounts could be designed to conform to people's mental accounting schemes. Researchers have gone on to note that "[t]he labeling of accounts, while nonsensical from the perspective of standard fungibility assumptions, could provide a salient reminder and help with the allocation of specific funds."[324] Additionally, the twelve-month bonus incentive to the SAEF program discussed above means that by withdrawing the money for nonemergency situations, recipients would forgo the relatively large bonuses they would otherwise receive if they instead left the money in their accounts. Finally, the need to activate the card and wait twenty-four hours to use it is likely to curb some impulsive spending.[325]

However, given the easy accessibility of SAEF account money, it is certainly possible that the lure of spending it for nonemergency purposes will result in some percentage of recipients quickly draining

[322] Mullainathan & Shafir, *supra* note 268, at 123.
[323] *Id.* at 123–24.
[324] *Id.* at 135.
[325] *See* Fennell, *supra* note 305.

their accounts despite incentives to the contrary. If this proves to be a widespread problem, the program should be modified to make the funds slightly more difficult to access. One way to provide further discouragement from impulsive and nonemergency use would be for the SAEF cards to arrive initially locked, with the need for justification before activation. To access funds, card-holders would have to call a financial crisis SAEF card hotline during normal business hours and explain what they want to use the card for and how much money they will need released. The threshold for approval would be very low, but the additional step before use may help to curb the urge to use the card for nonemergency expenses. Respondents would not have to provide documentation, but they would have to explain their situation to someone and seek approval. The hotline would add some additional administrative work (and thus disincentive for nonemergency use) without adding too many difficult, stigmatizing administrative steps. There is a concern that if the disincentives for use were too burdensome or stigmatizing, people would just turn to credit cards to avoid the hassle. I believe, however, that the justification hotline is a relatively non-burdensome step, and therefore such a concern is relatively small. Thus, such a hotline could be put into practice if necessary.

4. *Why Not a Simple Savings Direct Deposit Program Through Banks?*

At first glance, it may be hard to distinguish this program from a more straightforward direct deposit program. Why not simply encourage EITC recipients to have some or all of their refund deposited directly into a bank savings account, or have this done automatically?[326] Recipients would have access to this money through a debit card, and the money would accumulate interest. Many scholars have argued that it is important to bring low-income people into the mainstream banking system.[327] Directly depositing EITC refunds into a

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[326] Michael Barr advocates for EITC refunds to be directly deposited into bank savings accounts in order to bring unbanked individuals into the banking system. Michael S. Barr, *Financial Services, Saving, and Borrowing Among Low- and Moderate-Income Households: Evidence from the Detroit Area Household Financial Services Survey*, *in* Insufficient Funds, *supra* note 268, at 66, 94.

[327] *See, e.g.*, Newman & Chen, *supra* note 5, at 73–76 (explaining that a huge portion of the low-income population does not use banks and discussing why it may be beneficial for the poor to be banked); Michael S. Barr & Rebecca M. Blank, *Savings, Assets, Credit, and Banking Among Low-Income Households: Introduction and Overview*, *in* Insufficient Funds, *supra* note 268, at 1, 3–4 (discussing the disadvantages of not having a bank account).

bank account is one way to accomplish this goal.[328] However, the same scholars note that there are many risks for low-income people in becoming involved with banks in their current form.[329] High overdraft fees and account balance minimums are just some of the challenges low-income bank users face.[330] Some authors have suggested ways to improve and incentivize banks to better serve low-income clients,[331] but these recommendations have remained largely recommendations rather than reality, or have been applied only in pilot programs.[332]

Practically, a simple direct deposit may yield lower participation rates in the SAEF program because research shows that many low-income people do not trust banks,[333] and a significant percentage (20%–25%) are unbanked.[334] Findings from this study confirm that many respondents are wary of banks. We heard stories of respondents leaving banks because of high overdraft fees and other unexpected

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[328] Mullainathan & Shafir, *supra* note 268, at 134–35 (explaining that "a behavioral view would predict positive effects on saving from the opening of bank accounts" and from the direct deposit of EITC refunds into bank accounts).

[329] *See, e.g.*, Barr, *supra* note 326, at 69. Barr, an advocate for having low-income households use banking, notes that change is needed to make bank accounts feasible for this population. *Id.* He says, "As currently structured, the financial services system does not work for LMI [low- and middle-income] households. Many LMI households find that checking accounts are ill suited to their needs . . . . LMI households face a significant risk of overdrafting their checking accounts and paying high fees." *Id.* Barr goes on to note that "[m]any LMI households have had a bank account in the past but were unable to manage their finances to avoid overdrafts or insufficient funds fees, or they were unwilling to pay high fees. Minimum balance requirements may also be a significant barrier for low-income households." *Id.*

[330] *See* Barr, *supra* note 326, at 69 (explaining that, in addition to high overdraft fees and account minimums, low-income bank users are often deterred by prior negative banking experiences).

[331] *See, e.g.*, *id.* at 93 (proposing changes to bank accounts to make them more useful and appealing to low-income users and recommending incentives for banks to offer these accounts to low-income users).

[332] *E.g.*, BARR, *supra* note 160 (noting that the federal government has only made "some progress" toward incentiving low-income families to save and banks to provide helpful accounts for these families and describing a pilot program the Treasury Department launched in 2011 in pursuit of these goals).

[333] *See* NEWMAN & CHEN, *supra* note 5, at 73–74 (explaining that many low-income immigrant families, specifically those in Washington Heights, do not trust banks). The Federal Deposit Insurance Corporation (FDIC) estimates that approximately 20% "of lower income U.S. households—almost 7 million households earning below $30,000 per year—do not currently have a bank account." *See* FED. DEPOSIT INS. CORP., NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS, EXECUTIVE SUMMARY 4 (2009). Further, approximately 41.1% of unbanked households believe that opening a bank account in the future is "not likely at all." *Id.*

[334] Michael Barr and Rebecca Blank, for example, estimate that nearly 25% of low-income American families (those earning less than $18,900 per year) are unbanked and that nearly 13% of moderate-income households (those earning between $18,900 and $33,900 per year) are unbanked. *See* Barr & Blank, *supra* note 327, at 3.

charges.[335] Several respondents did not use banks but instead hid savings in their sock drawers, home safe deposit boxes, and around the house.[336] These respondents knew they could open a bank account, but felt that dealing with a bank was not desirable. When one respondent was asked if she ever considered opening a savings account, she said, "I don't have no money to pay monthly maintenance fees and I don't want to just start swiping because you can swipe a card with no money and you'll get an overdraft fee. And I don't have it to pay. And temptation will get you."[337] Even respondents who had bank accounts talked about avoiding them. One respondent told us, "If you go over on your checking they charge thirty-five dollars until it's paid. . . . [I]t's happened three or four times."[338] After discussing these fees, she said, "That's why I take out all the money."[339] Further, she noted, "Anything that we can pay in cash we'd rather do it because we're scared to use our [debit] cards . . . because of those overdraft fees."[340] In contrast to respondents' perceptions and suspicions of banks, respondents did not indicate suspicion or fear toward the IRS (though they did not want to owe the IRS money). This is likely because respondents in this study all received tax refunds, rather than owing taxes, and it is unlikely any of them ever had incomes high enough to have to pay substantial federal income taxes at tax time. For them, tax time is when they get a windfall payment, not a time that they owe money—and this windfall comes from the IRS.

Respondents' suspicious attitudes about banks are not entirely unfounded. Banks often have hidden fees, account minimums, and

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335 Michael Barr finds similar trends in his Detroit-area research. *See* Barr, *supra* note 326, at 69 (noting that many low-income families were previously banked but could not handle or did not want to pay the associated fees, and thus left the banking system altogether).

336 *E.g.*, Interview with Respondent 24 (Aug. 30, 2007) ("I just keep [savings] here in the house. . . . my money's stashed everywhere. It's never in the same spot."); Interview with Respondent 55 (Aug. 18, 2007) ("I took everything out [of the bank]. I do have some cash. It's just like I don't want to put any money in the savings."); Interview with Respondent 61 (July 19, 2007) ("Maybe if I could like, I'm giving my money, I'm giving half to my husband to put in the safe, we've got a safe."); Interview with Respondent 102 (July 29, 2007) ("Yeah, . . . I keep [savings] in my wallet and they know not to go in my wallet."); Interview with Respondent 172 (Aug. 27, 2007) ("I've been trying here lately to take some of my monies that I've earned . . . and trying to put some of it away in my sock drawer. . . .").

337 Interview with Respondent 86 (Oct. 11, 2007).

338 Interview with Respondent 27 (July 24, 2007).

339 *Id.*

340 *Id.*

charges when accounts go below a certain amount.[341] The IRS could attempt to negotiate with banks to make certain types of accounts available for SAEF account purposes that would avoid such problems, but the negotiations and resulting details would be complex. Recipients would remain vulnerable to hidden fees, bank mergers, bank closings, and a tangled web of negotiation between their bank and the IRS whenever a problem with an account occurred.

Finally, and perhaps most importantly, the SAEF accounts go beyond simple savings accounts. While the goal of encouraging low-income families to be banked may be important, that is not the goal of this proposal. The SAEF program is specifically intended to help provide EITC recipients with a financial cushion in the case of emergencies and to help avoid credit card use or immediate financial disaster. As discussed in Part VI.C.3, behavioral economic research shows that people engage in mental accounting, and therefore, labeling money for specific uses can make a difference in how individuals think about and use that money.[342] This program would nudge people toward saving specifically for an emergency fund. Even including the words "savings" and "emergency" in the name of the program could steer recipients in the right direction—toward savings with a plan to only use the SAEF funds in emergencies. The idea is that this fund would be viewed as a special government savings and emergency fund intended for just those purposes rather than a typical bank savings account.

5. *Savings Should Go to Asset Building and Long-Term Mobility Goals*

The SAEF program may appear to be a band-aid approach. Some may argue that instead of a savings program focused on smoothing shock events, savings for the poor should be focused on long-term asset accumulation and mobility goals.

Professor Michael Sherraden's individual development accounts (IDA) provide an example of a program that aims to aid long-term asset accumulation and mobility, specifically by providing matched savings. Thus far, IDAs have been implemented in the form of short-term demonstration projects.[343] Allowed uses of IDA savings are usually homeownership, education, and small business capitalization, and

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[341] *See* NEWMAN & CHEN, *supra* note 5, at 74–75 (noting the shortcomings of traditional bank accounts for the poor); Barr, *supra* note 326, at 69 (explaining how traditional bank accounts provide barriers to use for low-income users).

[342] *See supra* notes 322–24 and accompanying text (discussing mental accounting).

[343] *See* Michael Sherraden, *Individual Development Accounts and Asset-Building Policy: Lessons and Directions*, *in* INSUFFICIENT FUNDS, *supra* note 268, at 191–93.

in some cases cars and computers.[344] The program also requires financial education tailored to the specific goal of the savings account.[345] The goal of asset building is an important one, and having savings earmarked for mobility goals can motivate respondents to work harder toward these goals. Indeed, Sherraden found that IDAs provide motivation and goals, incentivizing holders to save more and plan for the future.[346]

The SAEF program does not run counter to asset and mobility programs such as IDAs, but instead should serve as a complement to these programs. A qualitative study of IDA account holders found that many participants made "unapproved withdrawals," thus giving up the matching funds until the money was replaced.[347] Researchers presume these withdrawls were made for acute short-term purposes.[348] If EITC recipients had SAEF accounts mentally earmarked for emergency funds, they would be more likely to withdraw only emergency funds from the SAEF account and thus would be more likely to be able to keep money in long-term savings accounts. Without SAEF funds, so many EITC recipients experience shock events requiring immediate money that it is not surprising Sherraden found that many IDA holders withdrew money from IDAs for unapproved purposes. Thus, SAEF accounts would serve not only to help low-income families maintain stability in the short term, but they may also contribute to longer term mobility by allowing money in long-term savings accounts to remain undisturbed.

D. Implementation Concerns for SAEF Accounts

Several important implementation issues would have to be resolved before the SAEF program could be fully established. First, there would certainly be administrative costs associated with the program since both additional staffing and improvements to IRS infrastructure are necessary to ensure its smooth operation. The main administrative costs would consist of hiring or transferring people to administer and oversee the program, creating a computer and record-keeping infrastructure that accurately tracks and updates SAEF accounts, and the general costs of administering SAEF cards and accounts. Additionally, because SAEF accounts would earn interest,

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344 *See id.* at 193 (listing the typical uses of IDA savings).

345 *See id.*

346 *Id.* at 197 (noting that IDA participants explained that the IDA "provides a 'road map' and a 'way to reach goals'" and that it made them "'more able to save,' 'look forward to saving,' and 'plan to save in the future'").

347 *Id.*

348 *Id.*

there may be some cost associated with payment of this interest, though the IRS may be able to meet or exceed the guaranteed interest through its own investment of the money. The matching program and annual bonus program would require additional funding. In the long term, however, the SAEF program would likely save the government money because it has the potential to keep scores of low-income people from needing even more costly government resources, such as welfare or the service of homeless shelters. Additionally, the matching program and annual bonus program could be eliminated if budget constraints and political feasibility so dictated.

There is no doubt that the IRS's capacity would be stretched, but the IRS could look to programs such as SNAP—which provides debit-like cards that are reloaded each month—for implementation guidance. Additional administrative attention would have to be paid to, for example, administering the cards, dealing with lost cards, and avoiding fraud.

Another implementation concern may be that SAEF would require the IRS to function like a social welfare agency. While this program will certainly require the IRS to undertake extra administrative steps, it is important to keep the program within the IRS rather than run it through a social welfare agency. As Steve Holt notes, "[m]ost EITC recipients are not now clients of social welfare agencies," and they do not want to be clients of these offices.[349] Running this program through welfare offices would be an automatic deterrent to most EITC recipients. As discussed in Part III, money received through such offices is riddled with negative stereotypes and stigma, even among recipients. Furthermore, "[t]he enforcement-centered approach of traditional benefits programs runs counter to the self-determinative, voluntary compliance character of the tax system and would unreasonably differentiate EITC recipients."[350] Social welfare offices are not experts in the tax code, so there could be confusion and administrative difficulties associated with running a program that depends on a recipient's tax return amount through these offices.

A related administrative concern is that the SAEF program forces the IRS to act as a bank. There are strong reasons to avoid banks taking over SAEF accounts, as discussed in Part VI.C.4. If the administrative capacity of the IRS proved unable to fully manage the SAEF program, however, the IRS could consider contracting with a

349 Holt, *supra* note 258, at 29 (advocating to keep the EITC within the IRS and out of social welfare offices); *see also supra* Part III (exploring EITC recipients' overwhelmingly positive responses to the EITC and contrasting these with their overwhelmingly negative responses to welfare).

350 Holt, *supra* note 99, at 29.

bank to help administer certain aspects of the program (in the same way some states contract with J.P. Morgan to administer SNAP accounts through electronic benefit cards). However, this option should occur only as a partnership between the IRS and a bank, rather than as a complete takeover of the program. The IRS should always remain the contact point for recipients.[351]

Conclusion

As more Americans become income-insecure, the demand for the public safety net continues to increase. There is agreement that the EITC plays a central role in that safety net, but the strength of the net for the poorest working Americans is debated. Congress has held numerous hearings and solicited expert advice about the transition from traditional welfare to work-based programs such as the EITC. In all of these conversations, one critical voice has been largely absent—that of the recipients. Similarly, legal academics have been debating the merits, design, and purpose of the EITC with few empirical studies as a basis for this commentary.

This study takes an important step toward incorporating what I learned from recipients about their financial lives into an evaluation of the EITC and a proposal for change. By using established sociological methods to collect and analyze the data, my findings highlight both the advantages and disadvantages of the EITC for recipients. The EITC is a popular program, and it is an essential part of many families' budgets. Further, it motivates recipients to work and allows them to make progress toward mobility goals. However, the EITC fails to provide support for families when they experience untimely financial shocks. As welfare has become less available both from a structural and from a cultural or psychological point of view, families either use credit cards as a buffer and then later find themselves in a mess of unmanageable debt from accumulated interest and fees, or they experience an immediate downward spiral that leaves them with a financial mess that takes years to clean up. As financial insecurity leads more families to seek out a public safety net for support, an epidemic of new bankruptcy filings and homeless families may be on the horizon unless change is made. My proposed SAEF accounts are one way to help avoid such an epidemic.

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351 *See supra* notes 333–40 and accompanying text (explaining that many low-income individuals have a deep suspicion of banks and a more positive view of the IRS).

Appendix A

Table 1: Demographics of Sample

	Boston			Champaign-Urbana	
	Proportion	Standard Error		Proportion	Standard Error
Race/Ethnicity					
Black	.35	(.04)		.58	(.06)
White	.35	(.04)		.42	(.06)
Latino	.30	(.04)		N/A	N/A
Married	.39	(.05)		.43	(.06)
Work Status					
Full Time	.47	(.05)		.49	(.06)
Part Time	.36	(.05)		.26	(.05)
Combined Full & Part Time	.17	(.04)		.25	(.05)
Education					
Less than High School	.14	(.03)		.04	(.02)
High School/GED	.14	(.03)		.22	(.05)
Some College	.35	(.05)		.30	(.05)
Associate's Degree	.25	(.04)		.35	(.06)
Bachelor's Degree	.11	(.03)		.07	(.03)
Post-Bachelor's Degree	.01	(.01)		.07	(.03)
Immigrant	.35	(.04)		.05	(.02)
Total Back Debt	$7506	($1106)		$11,408	($3279)
Tax Refund	$4686	($162)		$3640	($181)
Household Earnings	$24,281	($1421)		$21,672	($1671)
Household Earnings & Government Assistance	$27,781	($1339)		$25,570	($1551)
Sample Size	115			79	